

No. 13-21-00303-CV

IN THE THIRTEENTH COURT OF APPEALS
CORPUS CHRISTI/EDINBURG, TEXAS

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DANTE FLORES DEMARCHI,

KATHY S. MILLS
Clerk

Appellant,

v.

MELISSA SMITH AND JOSE GARCIA,

Appellees.

From 206th District Court of Hidalgo County, Texas
Cause No. C-1390-21-D

BRIEF OF APPELLEES

BECK REDDEN LLP

RAY THOMAS, PC

Nicholas Bruno
nbruno@beckredden.com
Chad Flores
cflores@beckredden.com
1221 McKinney, Suite 4500
Houston, Texas 77010-2010
Telephone: (713) 951-3700
Facsimile: (713) 951-3720

Raymond L. Thomas
rthomas@raythomaspc.com
4900-B North 10th Street
McAllen, Texas 78504
(956) 632-5032
(956) 540-5631 Fax

**ATTORNEYS FOR APPELLEES,
MELISSA SMITH AND JOSE GARCIA**

Oral Argument Not Requested

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STATEMENT OF THE CASE

Nature of the Case

After physical confrontations by Defendant Dante Flores-Demarchi against other members of the school board upon which they served, Plaintiffs Melissa Smith and Jose Garcia sued Flores-Demarchi for defamation. These claims are based on Flores-Demarchi's months-long campaign to accuse Plaintiffs of being (1) "corrupt public officials who have committed crimes for which they have not been held to account," CR175-76, and (2) "complicit in sexual assault," CR165, and "supporters of sexual assault," *see* CR173.

Trial Court

Hon. Rose Guerra Reyna, 206th Judicial District Court, Hildago County, Texas

Proceedings

Flores-Demarchi filed a Texas Citizens Participation Act (TCPA) anti-SLAAP motion to dismiss Plaintiffs' claim. CR33. After Plaintiffs provided additional detail in support of their defamation claim, CR162, Flores-Demarchi amended his motion to dismiss. CR179. Plaintiffs responded. CR303.

Flores-Demarchi retreated in his Reply, quickly abandoning many of his arguments. Unsatisfied with his original arguments, he simply chose to develop new ones on the eve of the hearing on his TCPA motion. CR924. Two days before the hearing, Flores-Demarchi opted to attach new evidence to develop these new arguments. *See id.* Plaintiffs moved to strike that evidence as untimely filed. CR1004.

Disposition

Flores-Demarchi's TCPA motion to dismiss was overruled by operation of law on September 20, 2021. *See* TEX. CIV. PRAC. & REM. CODE § 27.005(a).

Parties on Appeal

Appellant: Dante Flores-Demarchi
Appellees: Melissa Smith; Jose Garcia

STATEMENT REGARDING ORAL ARGUMENT

Appellant gives no statement regarding why he requests oral argument. Although Appellant's brief is lengthy because of the sheer number of issues he raises, oral argument is not necessary because, legally, the issues he raises are easily foreclosed by binding authority and, factually, the defamation claim, based on two specific statements, is relatively uncomplicated. If the Court believes oral argument is necessary, however, Appellees welcome the opportunity to participate.

ISSUES PRESENTED

There are two issues presented in this interlocutory appeal:

1. In his motion to dismiss, Defendant, Dante Flores-Demarchi, challenged several elements of the defamation claim brought by Plaintiffs, Melissa Smith and Jose Garcia, through issues typically left for a factfinder to determine.

Did Plaintiffs, Melissa Smith and Jose Garcia, satisfy their minimal burden under the Texas Citizen's Participation Act to provide "the minimum quantum of evidence necessary to support a rational inference that the allegation of fact is true"? *See In re Lipsky*, 460 S.W.3d 579, 590 (Tex. 2015).

2. Does federal law preempt Plaintiffs' defamation claim?

REPLY TO STATEMENT OF FACTS

Defendant, Dante Flores-Demarchi, uses Facebook “in large part, to attack[] those in positions of authority.” CR163. This case involves two Plaintiffs who are or were school board members of Sharyland ISD—Melissa Smith and Jose Garcia—who are victims of Flores-Demarchi’s Facebook Posts. CR174. Flores-Demarchi engaged in a months-long campaign, as evidenced by several Facebook Posts, to accuse Plaintiffs of (1) “corruption” and “illegal activity” to create the “implication and gist . . . that Plaintiffs are corrupt public officials who have committed crimes for which they have not been held to account,” CR175-76, and (2) being “complicit in,” CR165, and “supporters of sexual assault,” CR173.

These accusations come from a disgruntled former student of Sharyland High School. CR348-49. Flores-Demarchi’s defamatory Facebook Posts against these two school board members are not a one-time indiscretion, but rather part of a pattern that demonstrates “a manifest problem with authority.” CR163. Flores-Demarchi has also chosen to direct his ire to police officers and sitting judges whom Flores-Demarchi defames on Facebook. CR163-64 & n.2. “By dedicating most of his social media posts to tormenting Plaintiffs, Defendant is intentionally trying to subject them to public hatred and distain.” CR174.

Flores-Demarchi does have one special target: “the Sharyland ISD superintendent and its school board members.” CR164. With them, he does not limit his interactions to Facebook; he has created “ugly scene[s]” requiring responses from law enforcement. Plaintiff, Melissa Smith, testified to two such confrontations:

As a School Board member, I am aware of an ugly scene created by Mr. Flores-Demarchi when he came to central campus to make demands on our Superintendent. Law enforcement had to be called to escort Mr. Flores-Demarchi from the premises, and he is no longer allowed on central campus. As a School Board member, I also became aware of a verbal assault reported by one of our principals, Ms. Lori Ann Garza. Ms. Garza reported that Mr. Flores-Demarchi confronted her at CVS Pharmacy and yelled “Fuck you bitch!” in front of her children.

CR552-53.

Flores-Demarchi’s Facebook Posts are reflective of this dangerous behavior. He shared a meme on his Facebook Page that appeared to be a “threat of potential violence” directed to Plaintiffs:

On February 2, 2021, Mr. Flores-Demarchi posted a meme from the movie *Joker*, a dark movie about Arthur Fleck, a mentally unstable person who went on a murder spree. The particular scene from the movie depicted in the meme is the talk show host Murray Franklin interview of Fleck just before Fleck pulls a gun and shoots Murray in the face on national television. The meme posted by Mr. Flores-Demarchi is altered to cast Fleck as a disgruntled “stakeholder with a voice in Sharyland ISD.” This meme was considered by me and others as a threat of potential violence, especially in light of all the mass shooting going on, even in our schools.

CR553; *see* CR537.

This Facebook threat does not come in a vacuum. Flores-Demarchi has devoted “[m]any of his posts the past year [to] express his (often) brash views and opinions about Sharyland ISD’s administration and school board.” *Id.* Flores-Demarchi has been given “every opportunity to retract and mitigate” his most egregious Facebook Posts, but has “steadfastly refuse[d].” *Id.*

There are three Facebook profiles that are relevant to this claim: (1) the Facebook Page “Voters against Sexual Assault”; (2) the Facebook Page “Red’s Voice”; and (3) Defendant’s own personal Facebook Page. CR164-65.

The Facebook Posts that form the basis of Plaintiffs’ defamation claim were posted on Flores-Demarchi’s personal Facebook Page. CR165-73. These included both his own original Posts as well Facebook Posts that he shared from the “Red’s Voice” Facebook Page, often with his own commentary. *See id.* Flores-Demarchi’s Facebook Posts come in the context of contemporaneous posts from the “Voters against Sexual Assault” Page. Plaintiffs’ petition accurately quotes from each Facebook Post. *Id.* Additionally, it numbers each of the Facebook Posts that appear on Flores-Demarchi’s personal Facebook Page. *Id.*; *see* CR495-541 (containing screenshots of Facebook Posts). The list of these Facebook Posts is included in Appendix A for the Court’s convenience.

These Facebook Posts, part of an orchestrated scheme by Flores-Demarchi over several months, make two basic statements.

First, the Facebook Posts make the statement that “Plaintiffs are corrupt public officials who have committed crimes for which they have not been held to account.” CR174-76. In particular, Posts 2-18 on Flores-Demarchi’s personal Facebook Page are relevant to this statement. Flores-Demarchi does not contest that he published these Facebook Posts.

Importantly, these Facebook Posts are not mere venting of Flores-Demarchi’s subjective opinion. Flores-Demarchi makes references to particular alleged election law violations, (Post 6 (CR167, CR500); Post 7 (CR167, CR501); Post 9 (CR168, CR505)), and specific alleged contracts that he claims were awarded because of an allegedly corrupt motive, (Post 5 (CR166, CR499); Post 16 (CR171, CR520)). Both allegations are baseless. CR554-55; CR551.

Second, several Facebook Posts claim that Plaintiffs are “complicit in,” CR165, and “supporters of sexual assault,” CR173. Posts 1 and 2 on Flores-Demarchi’s Facebook Page, CR165, 495, 496, especially in context of the “Voters Against Sexual Assault” Posts, CR172-73, CR528-35, make this statement.

Again, Flores-Demarchi airs these grievances as if they were based on actual facts. He references specific allegations. CR165, CR495 (“unlawful crimes committed by a pervert posing as a CHILD PSYCHOLOGIST”). Again, these accusations are baseless: “Any sexual assault claims were investigated by our administration and legal counsel and/or law enforcement.” CR543.

These Facebook Posts were made as part of an intentional campaign. Flores-Demarchi himself testified that he intended to “draw[] attention” to Plaintiffs:

Q. And you are drawing attention—you’re calling this to the attention of all the Sharyland community and beyond, right?

A. Uh-huh.

Q. Is—was that your intent?

A. Yes.

CR360; CR446, CR455.

“[G]iven [his] history with the school,” Defendant testified that he believed that “any speculation and public discourse would be healthy for the community.” CR381. He acknowledged—over and over again—that he had absolutely no evidence to support his claims:

Q. So I take it the answer to my question is you have no evidence that would support this statement that was reposted?

....

A. I have—that I have no evidence?

Q. Right.

A. I mean, I—I personally have no physical documentation, but that goes for all the rest of them, as well, not just this one.

CR357; CR358 (“I have no concrete proof”); CR381 (“I honestly don’t remember” if he had evidence to support his allegations); CR420-21 (“I didn’t do homework.”).

Verifying that the Facebook Posts were true was, according to Defendant, “someone else’s job, right?” CR423-24. “I did not feel the need to, like, corroborate them.” CR404.

This failure to investigate was contrary to Flores-Demarchi's usual practice. Flores-Demarchi repeatedly referred to himself as an "aspiring educator." *See, e.g.*, CR458. As an "aspiring educator," he believes that reflection and questioning oneself until he "know[s] it's pretty grounded" in fact is important:

I think—like I said, I think it was, again, exemplifying the type of like reflection and discourse that I tried to invoke out of, like, students and, like, any learner that, like, you should always question your beliefs. And if something seems wrong, to question it even more until you questioned it so much that you know it's pretty grounded in something.

CR463.

Flores-Demarchi chose to abandon this typical practice of questioning something until he "know[s] it's pretty grounded in" truth, *id.*, when it came to accusing Plaintiffs of corruption and complicity in sexual assault.

Plaintiffs sued Flores-Demarchi for defamation. CR174. While Flores-Demarchi showed no hesitation when he was hiding behind a computer screen—or physically confronting his targets in schools or store parking lots—he quickly retreated when he realized that civil liability was on the line. Although he acknowledges that he posted these Facebook Posts, Flores-Demarchi now claims that "it's not my statement," and he "[m]ostly . . . just trust[s] my friends," CR356, and that he was simply "raising important questions that are very important conversations to have in a democracy," CR378, so people could "form their own opinion," CR374.

A jury should sort out whether this new spin on his Facebook Posts rings true in light of Flores-Demarchi's admitted "history" with the Sharyland ISD board, CR381, Flores-Demarchi's months-long campaign against Plaintiffs on Facebook, CR165-73, and Flores-Demarchi's physical confrontations, CR552-53, CR553; *see* CR537. But he doesn't want to face a jury with these facts.

Instead, Flores-Demarchi filed a Texas Citizens Participation Act (TCPA) anti-SLAAP motion to dismiss Plaintiffs' defamation claim before it could get to a jury. CR33. After Plaintiffs provided additional detail in support of their defamation claim, CR162, Flores-Demarchi amended his TCPA motion to dismiss. CR179. This motion asserts many arguments, which were often undeveloped, CR332, or had absolutely no precedential support, *see, e.g.*, CR331. Plaintiffs responded. CR303.

Like with his previous behavior, Flores-Demarchi quickly retreated, abandoning many of his arguments. Unsatisfied with his original arguments, he chose to simply develop new ones on the eve of the TCPA hearing. CR924. Two days before the hearing, Flores-Demarchi opted to attach new evidence to develop these new arguments, depriving Plaintiffs of a meaningful opportunity to reply to them. *See id.* Such tactics are not allowed by the TCPA, so Plaintiffs moved to strike that evidence as untimely filed. CR1004.

The trial court held a hearing on Flores-Demarchi’s TCPA motion on August 19, 2021. 3RR1. Flores-Demarchi’s TCPA motion to dismiss was overruled by operation of law on September 20, 2021. *See* TEX. CIV. PRAC. & REM. CODE § 27.005(a).¹

Flores-Demarchi then filed this appeal. CR1233; TEX. CIV. PRAC. & REM. CODE § 27.008(a).

¹ Despite no longer being part of the litigation—and never having been served nor answered the lawsuit—another “John Doe” Defendant also filed a TCPA motion to dismiss in this case, which crossed Plaintiffs’ nonsuit of the claim against him in cyberspace. The trial court denied that TCPA motion by operation of law. The TCPA appeal regarding John Doe’s motion to dismiss is pending in this Court in Cause No. 13-21-00304-CV.

SUMMARY OF ARGUMENT

Flores-Demarchi ignores what controls at this stage—Plaintiffs’ evidence that “establish[s] a given fact if it is not rebutted or contradicted.” *In re Lipsky*, 460 S.W.3d 579, 590 (Tex. 2015). Plaintiffs provided evidence to support a *prima facie* case of their defamation claim: that Flores-Demarchi, acting with actual malice, damaged them by engaging in a months-long campaign making the false, defamatory statements that Plaintiffs were (1) corrupt and (2) complicit in sexual assault.

That is all that is required in this procedural posture. Flores-Demarchi’s arguments to obtain an early dismissal directly contradict Texas law (*i.e.* regarding the nature of Plaintiffs’ defamation *per se* claim), misstate the record (*i.e.* that Plaintiffs’ defamation claim is based on Flores-Demarchi’s false statement of fact), and ignore the TCPA standard (*i.e.* attempting to bypass a factfinder on the fact-bound issues of satire/hyperbole). The trial court rightly rejected these arguments.

Furthermore, Plaintiffs’ defamation claim is not preempted by federal law. Flores-Demarchi’s preemption argument misstates Plaintiffs’ claim and is legally incorrect anyway. No surprise that this federal preemption argument is tucked away at the end of his brief.

Finally, Flores-Demarchi’s defamation is not excused by his classification of himself as a mere “internet commentor” simply exercising his right of free speech. Br. at 40. The right of free speech is not the right to wrongfully defame another.

The Court has the “essential task” of ensuring that “free speech” is not used as a front to wrongfully injure another, like Flores-Demarchi attempts to do:

[I]n today’s world, . . . modern technology allows information to be easily and widely disseminated without necessarily being subjected to the sort of rigorous verification processes that conventional media sources are expected to employ. Maintaining that balance of allowing the press the freedom to perform its critical societal function while protecting the rights of individuals harmed by false or misleading reporting remains an essential task

D Magazine Partners, L.P. v. Rosenthal, 529 S.W.3d 429, 433 (Tex. 2017).

The trial court correctly applied the law and should be affirmed.

ARGUMENT

The Court should reject Appellant's arguments regarding (1) specific elements of the defamation claim and (2) federal preemption of that claim.

I. Plaintiffs showed a *prima facie* case of defamation.

Plaintiffs provided evidence to make a *prima facie* showing of each element of their defamation claim: that Flores-Demarchi's Facebook Posts together state that (1) "Plaintiffs are corrupt public officials who have committed crimes for which they have not been held to account," CR175-76, and (2) Plaintiffs are "complicit in," CR165, and "supporters of sexual assault," *see* CR173.

A defamation claim requires that (1) the defendant published a statement, (2) the statement was false, (3) the statement defamed the plaintiff, and (4) the statement proximately caused the plaintiff damages. *Anderson v. Durant*, 550 S.W.3d 605, 617-18 (Tex. 2018). When, like here, the plaintiff is a public figure, the defendant must act with actual malice. *Bentley v. Bunton*, 94 S.W.3d 561, 590 (Tex. 2002).

The parties agree that Flores-Demarchi published a statement (Element #1), but contest Elements #2-4 and the "actual malice" requirement. Flores-Demarchi's arguments regarding these elements are largely predicated on a misunderstanding of basic defamation law and a misapplication of the TCPA standard. Thus, before addressing any specific arguments, it is helpful to briefly review (1) the TCPA standard and (2) defamation law generally.

A. The TCPA only requires evidence to showing a *prima facie* case of defamation.

Much of Appellant's brief raises issues typically left to a jury. The procedural posture alone renders these issues premature. No jury has decided any fact issues.

The Court is aware of the typical two-part TCPA framework. *See* TEX. CIV. PRAC. & REM. CODE §§ 27.001-.011. All agree that Flores-DeMarchi's TCPA motion satisfies the first part of the TCPA test: his burden to show that this case is "based on, relates to, or is in response to a party's exercise of the right of free speech, right to petition, or right of association." *Id.* at § 27.003, 27.005(b).

Thus, Plaintiffs must satisfy the second part of the TPCA by providing "clear and specific evidence" that shows "a *prima facie* case for each essential element of the claims." *In re Lipsky*, 460 S.W.3d 579, 587 (Tex. 2015); TEX. CIV. PRAC. & REM. CODE § 27.005(c). The Court must "consider the pleadings and any supporting and opposing affidavits." *Lipsky*, 460 S.W.3d at 587.

A plaintiff need not resolve all factual issues. *See id.* Instead, "a plaintiff must provide enough detail to show the factual basis for its claim." *Id.* at 591. "In a defamation case that implicates the TCPA, pleadings and evidence that establishes the facts of when, where, and what was said, the defamatory nature of the statements, and how they damaged the plaintiff should be sufficient to resist a TCPA motion to dismiss." *Id.*

B. The Facebook Posts, as a whole, should be reviewed to determine the statement that Flores-Demarchi made.

Texas recognizes two categories of defamation claims: (1) defamation *per se*, (a statement is “defamatory by its text alone”) and (2) defamation *per quod* (“a statement whose defamatory meaning” “is not apparent but must be proved” by “reference to extrinsic facts”). *Dallas Morning News, Inc. v. Tatum*, 554 S.W.3d 614, 625-26 (Tex. 2018) (cleaned up).² Plaintiffs assert both claims. CR174-75.

Defamation by implication is not a separate category of defamation. It is merely the doctrine—common in any case involving textual interpretation—that the court must “construe the publication as a whole,” because “a plaintiff can rely on an entire publication to prove that a defendant has implicitly communicated a defamatory statement.” *Tatum*, 554 S.W.3d. at 628. This doctrine recognizes the reality of defamatory campaigns directed at a particular person means that a defamatory statement may arise over several publications over a lengthy period. *See Scripps NP Operating, LLC v. Carter*, 573 S.W.3d 781, 790-91 (Tex. 2019) (involving articles printed over several months and citing *Bentley*, 94 S.W.3d at 581, 602, which involved programs “on public access television over a nearly eight-month span”). “[T]he defamatory meaning,” however, still “arises from the statement’s text, but it does so implicitly.” *Tatum*, 554 S.W.3d. at 627.

² More recent authorities often refer to defamation *per se* as “textual defamation” and defamation *per quod* as “extrinsic defamation,” but the legal doctrine remains the same. *See id.*

**1. The Facebook Posts as a whole falsely accuse Plaintiffs of:
(1) corruption and (2) complicity in sexual assault.**

Plaintiffs' claims fall squarely within a defamation *per se* paradigm. Plaintiffs allege that Flores-Demarchi published several Facebook Posts whose text, when read together:

- (1) accused Plaintiffs of “corruption” or “illegal activity” to create the “implication and gist . . . that Plaintiffs are corrupt public officials who have committed crimes for which they have not been held to account,” CR175-76;
- (2) accused Plaintiffs of being “complicit in,” CR165, and “supporters of sexual assault,” CR173.

Notably, Flores-Demarchi largely³ does not contest that the Facebook Posts in their entirety make these statements. That is no surprise. He testified, candidly that all of the Facebook Posts “are, all, like, very similar in nature and very similar in, like, the accusations [such] that it all mixes up.” CR376. He testified that a reader must “read them all together, one by the other,” so that the Facebook Posts “make[] a lot more, like, factual sense.” CR419. In short, Flores-Demarchi meant for these Facebook Posts to be read together.

³ Flores-Demarchi does assert—with no citation to any legal authority—that “Plaintiffs never presented the . . . totality of Mr. Flores-Demarchi’s social media posts.” Br. at 24. There is no such requirement under Texas law. Just like a plaintiff need not quote every article ever printed by a newspaper to establish the statement created by a series of articles, *cf. Scripps*, 573 S.W.3d at 785, Plaintiffs need not produce every one of Flores-Demarchi’s social media posts. They satisfied their obligation to show “enough detail to show the factual basis” of their defamation claim by providing the specific Facebook Posts that made the statements. *Lipsky*, 460 S.W.3d at 591.

The only additional requirement in invoking the defamation-by-implication doctrine is that the defendant must “intend[] or endorse[] the defamatory inference.” *Tatum*, 554 S.W.3d at 636-37. That is easily established. The Facebook Posts affirmatively and repeatedly accuse Plaintiffs of being corrupt and complicit in sexual assault. *See* CR495-541. Flores-Demarchi agreed that he was trying to convey that Plaintiffs were corrupt, CR455, and supported sexual assault, CR36; CR446.

Flores-Demarchi’s eight-word argument on this point does not engage the Facebook Posts or his testimony. Br. at 35. This undeveloped argument is waived anyway. *Collins v. Walker*, 341 S.W.3d 570, 575 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (Texas Rule of Appellate Procedure 38.1 requires more than “merely uttering brief, conclusory statements unsupported by legal citations”).

When the Court considers the entire context, it is clear that the Facebook Posts as a whole make two statements. These statements, in turn, establish a *prima facie* case of defamation. *See* TEX. CIV. PRAC. & REM. CODE § 27.005(c).

2. Defamation *per se* claims still consider the publication as a whole.

Because Plaintiffs assert both a defamation *per se* and *per quod* claim, CR174-75, the distinction between these doctrines is only implicated in Flores-Demarchi’s argument regarding damages. Flores-Demarchi, however, treats the defamation-by-implication doctrine as a sort of legal unicorn that absolves him of the need to address unfavorable binding authority. That position simply misstates the law.

To do so, Flores-Demarchi tries to distract the Court with a lengthy discussion. He, first, correctly recognizes the two categories of defamation, Br. at 46, but then appears to claim that there are six different types of defamation, *see id.* at 22 (creating a chart that lists the fourth, fifth, and six “ways” defamation can “aris[e]”). He concludes that defamation claims that rely upon the defamation-by-implication doctrine “are, by definition, defamation *per quod* because they require extrinsic evidence.” Br. at 46.

That conclusion is flatly contradicted by the Supreme Court. In fact, the very authority Flores-Demarchi cites expressly said the exact opposite: “Defamation by implication is ***a subset of textual defamation.***” *Tatum*, 554 S.W.3d at 627 (emphasis added); *see id.* at 626 (“‘[T]extual defamation’ refers to the common-law concept of defamation *per se*”). Defamation *per se* “can be *textual* and *implicit*.” *Id.* at 627. “When a publication’s text implicitly communicates a defamatory statement, we refer to the plaintiff’s theory as ‘defamation by implication.’” *Id.* Such a defamation-by-implication claim can be every much a defamation *per se* claim as one in which “what the statement *says* and what the statement *communicates* are the same;” “[i]n other words, [when] the defamation is both *textual* and *explicit*.” *Id.*

The key as to whether a defamation claim is *per se* or *per quod* remains “the same as that between extrinsic defamation and textual defamation generally”:

In a defamation-by-implication case, the defamatory meaning arises from the statement's text, but it does so implicitly. Defamation by implication is not the same thing as textual defamation. ***Rather, it is a subset of textual defamation.*** That is, if the defamation is textual, it may be either implicit or explicit. . . . ***And, importantly, nor is implicit textual defamation the same thing as extrinsic defamation,*** although parties and courts have often confused the two. Finally, defamation by implication is not the same thing as defamation by innuendo. ***The dividing line is the same as that between extrinsic defamation and textual defamation generally: the first requires extrinsic evidence, but the second arises solely from a statement's text.***

Id. at 627 (emphasis added).

The fact that defamation *per se* claims still consider the publication as a whole is further demonstrated by the Supreme Court's decision in *D Magazine Partners, L.P. v. Rosenthal*, 529 S.W.3d 429 (Tex. 2017). It analyzed an article's "gist"—reviewing it "as a whole in light of the surrounding circumstances based upon how a person of ordinary intelligence would perceive it," *id.* at 434—and held "that a reasonable view of the article's gist" was defamatory ("that Rosenthal fraudulently obtained SNAP benefits"). *Id.* at 439. Importantly, because "the article could reasonably be construed to accuse Rosenthal of committing a crime, ***it is defamatory per se, and Rosenthal need not show actual damages.***" *Id.* (emphasis added).

Rosenthal is not the only time the Supreme Court has applied the defamation-by-implication doctrine in a defamation *per se* claim. It did it again in a defamation *per se* case coming from this Court. *See Scripps NP Operating, LLC v. Carter*, 567 S.W.3d 1, 18 (Tex. App.—Corpus Christi 2016), *aff'd*, 573 S.W.3d 781 (Tex. 2019).

In *Scripps*, the Supreme Court concluded that “the court of appeals correctly analyzed . . . multiple articles [published over several months] together to assess whether the publications were defamatory.” 573 S.W.3d. at 790. Importantly, this Court relied, in part, on the very decision that Flores-Demarchi seeks to run from. 567 S.W.3d at 20 (citing *Bentley v. Bunton*, 94 S.W.3d 561, 581 (Tex. 2002)).

The lesson of *Tatum*, *Rosenthal*, and *Scripps* is that a defamation claim that construes several publications together as forming a single statement does not preclude it from being defamatory *per se*. The “dividing line” is simply whether the statement—whether coming in an individual remark or through a “gist” given in several publications over several months⁴—gives a defamatory meaning based on “extrinsic evidence” or “solely from a statement’s text.” *Tatum*, 554 S.W.3d at 627.

This brief will address in a later section why the two statements at issue are defamatory *per se*. For now, it is sufficient to note that reviewing statements “as a whole” does not preclude a defamation *per se* claim. The Court can, thus, confidently to look to authorities addressing defamation *per se* claims where appropriate.

⁴ Flores-Demarchi makes a passing comment that “defamation by implication arises not from publishing objectively false statements, but by showing a false and defamatory implication that arises from true statements.” Br. at 25 (citing *Tatum*, 554 S.W.3d at 635). This statement is not accurate—and not supported by *Tatum*. While *one way* that defamation by implication can be shown is when a communication “conveys materially true facts from which a defamatory inference can reasonably be drawn,” nothing in *Tatum* says that this is the *only way* such defamation can be shown. *See id.* Flores-Demarchi’s undeveloped comment does not support reversal.

C. The Facebook Posts that form the basis of the defamation claim are false and defamatory (Elements 2 and 3).

The Facebook Posts are false and defamatory because they are based on false statements of fact. Flores-Demarchi argues that the Facebook Posts are neither false nor defamatory because they (1) are merely statements of opinion; (2) are hyperbole or satire, or (3) do not mention Plaintiffs. None of these arguments support reversal.

1. The Facebook Posts are based on false statements of fact.

Flores-Demarchi argues that several Facebook Posts are not false because they are “classic statement[s] of opinion,” and “not a provably false statement of act.” Br. at 38. This argument does not support dismissal because the Facebook Posts, when considered in their entire context, can be found to be allegations against Plaintiffs based on verifiable fact.

The key to whether a statement supports a defamation claim is whether the statement, in its entire context, is purported to be based on fact or merely a subjective opinion. *See Bentley*, 94 S.W.3d at 580. “It is well settled that . . . whether [a publication] is false and defamatory, depends on a reasonable person’s perception of the entirety of a publication and not merely on individual statements.” *Id.* at 579. “This is also true in determining whether a publication is an actionable statement of fact or a constitutionally protected expression of opinion.” *Id.* “In lieu of” creating “a separate privilege for ‘opinion,’” Texas law “focuses the analysis on a statement’s verifiability and the entire context in which it was made.” *Id.* at 581.

This legal proposition is illustrated in a case Flores-Demarchi cites. Br. at 39-40. In that case, the defendant “lodged official complaints against the [plaintiffs] for animal cruelty” and posted on an online forum that the plaintiffs “were guilty of animal neglect and cruelty with respect to their dog.” *Maldonado v. Franklin*, No. 04-18-00819-CV, 2019 WL 4739438, at *10 (Tex. App.—San Antonio Sept. 30, 2019, no pet.). Because the statements came in the context of allegations of specific “‘objectively verifiable’ fact[s]—that the [plaintiffs] had committed a criminal offense,” they were no longer protected statements of opinion. *Id.*

Both statements satisfy this test because they are based on false statements of verifiable fact. We will start with the statement regarding corruption.

a. Flores-Demarchi’s accusation regarding corruption purports to be grounded in (verifiably false) facts.

Flores-Demarchi’s Facebook Posts creating the statement accusing Plaintiffs of corruption is based on verifiable fact and, thus, can form the basis for Plaintiffs’ defamation *per se* claim.

First, an accusation of corruption is ordinarily defamatory *per se*. While Flores-Demarchi argues that “the naked accusation of corruption, standing alone, is not susceptible to a defamatory meaning because it is a statement of opinion,” Br. at 27-28, the authority that he cites for that proposition—*Bentley v. Bunton*, 94 S.W.3d 561 (Tex. 2002)—actually says the exact opposite. An accusation of corruption “is ordinarily defamatory *per se*”:

While the word may be merely epithetic in the context of amorphous criticism, it may also be used as a statement of fact that can be proved true or false Corrupt conduct, determined as a matter of fact, may be punished under Texas law in numerous situations. Accusing a public official of corruption is ordinarily defamatory *per se*.

Id. at 581-82.

The same rule discussed earlier applies: the statement is defamatory when the “clear import” of the statements “was that [the plaintiff] was corrupt as a matter of verifiable fact” *Id.* at 585. Although Flores-Demarchi spends much time explaining that his Facebook Posts do “not impute any specific crime,” Br. at 29-34, there is no requirement that a crime be alleged (and he cites no authority for this supposed requirement). An allegation of “corruption” based on specific facts is sufficient. *Bentley*, 94 S.W.3d at 581-83 (internal citations omitted).

This Court has reached the same conclusion. *See Begum v. Auten*, 13-13-00210-CV, 2015 WL 1957080, at *5 (Tex. App.—Corpus Christi Apr. 30, 2015, no pet.) (emphasis added) (“[G]enuine issues of material fact exist as to the defamatory character of some of the statements contained in Auten’s online postings ***including those that appear to imply that appellant is corrupt*** and is a thief.”). Inexplicably, Flores-Demarchi believes this case supports his argument. *See* Br. at 28 n.52.

The “entire context” in which each of the Facebook Posts were made indicates that the statement that Plaintiffs are corrupt was not merely Flores-Demarchi’s subjective opinion, but an accusation of corruption based on verifiable fact.

Importantly, Flores-Demarchi does not contest that several of his Facebook Posts make specific allegations of corruption based on verifiable statements of fact:

- ***He makes specific references to alleged election law violations:*** “When you’re so comfortable committing fraud that you don’t even realize you’re doing it anymore. OOPS. . . . JOHN H. SHARY ELEMENTARY PARENTS WERE GIFTED AN ILLEGALITY...ELECTIONEERING ILLEGALITY TO BE PRECISE!!!!.... #whatisWALDOtoyou...BUT its not the first time #ElectioneeringViolations occur.” CR167, CR500 (Post 6); *see* CR167, CR501 (Post 7) (“PAST ELECTIONEERING VIOLATIONS . . . back in 2015”); CR168, CR505 (Post 9) (“#Waldo was here #flirting with #ELECTIONEERING VIOLATIONS.”). These accusations of election law violations are false: “At no time did [Plaintiffs] engage in the crime of illegal electioneering.” CR549-51; *see* CR544-45.
- ***He references specific contracts that were allegedly awarded because of corrupt motives:*** “No other than [rat snake] #marieantoinettes Ford of Boerne was awarded a bid, 123K [bag of money], #cuttingchecks for 3 TRUCKS.” CR171, CR520 (Post 16). This accusation is false: “Sharyland ISD needed three trucks and published a Request for Proposals. None of the Ford dealerships in the Valley submitted a bid because they can make more money selling trucks to the general public and did not want to sacrifice some of their truck inventory to a school district for a below market price. [Plaintiffs] family owns Ford of Boerne and, because of our commitment to the Sharyland ISD, we submitted the ‘winning’ bid. The truth is that we lost money on the sale. [Plaintiffs] did not financially benefit from this transaction.” CR551.

Notably, Flores-Demarchi’s appellate (and trial court) briefing does not address these factual allegations in any of these Facebook Posts.⁵ All of the Facebook Posts supporting the statement that Plaintiffs are corrupt (Posts 1-5, 8, 10-15, and 17-18) were made in context of these Facebook Posts.

⁵ Flores-Demarchi addresses only Post 6 in the section of his brief discussing “opinions on matters of public concern,” Br. at 38-39, but even there he only claims that this is a statement of “rhetorical hyperbole.” *Id.* He does not address the fact that it contains a factual allegation.

The “entire context” of these Facebook Posts, which indisputably accuse Plaintiffs of corruption and crimes based on specific facts, demonstrates that the allegations of “corruption” can be verified. *Bentley*, 94 S.W.3d at 581. Flores-Demarchi’s assertion that this case is different than *Bentley*, because, in *Bentley*, “the speaker was setting forth ‘objective, provable facts,’” Br. at 32, ignores the record. Just like in *Bentley* a jury here can test the truth of these specific factual allegations that supposedly show that Plaintiffs are “corrupt.” *Id.*

Consider the allegation that Plaintiffs were corrupt because they have violated election laws. The factual support for this allegation can be verified: Flores-Demarchi claimed that two specific examples of election law violations. CR167, CR500 (Post 6); *see* CR167, CR501 (Post 7). Plaintiffs provided testimony showing this claim is false. CR549-51; *see* CR544-45. If Flores-Demarchi has contrary evidence—which he has chosen not to provide—a factfinder can determine whether Flores-Demarchi’s statement that Plaintiffs are corrupt based on election law violations is true. For now, a *prima facie* defamation case has been alleged.

Similarly, a jury could test the factual basis for the other allegations of corruption, based on the specific allegations about the contracts Flores-Demarchi claims were awarded because of corrupt motives. *Bentley*, 94 S.W.3d at 581.

In short, Flores-Demarchi’s statement that Plaintiffs were “corrupt” is based on verifiably false facts, and is, thus, defamatory. *Id.*

b. Flores-Demarchi's accusation regarding sexual assault purports to be grounded in (verifiably false) facts.

The analysis regarding Flores-Demarchi's statement that Plaintiffs are "complicit in," CR165, and are "supporters of sexual assault," CR173, is substantively similar. That statement is, also, based on verifiable statements of fact. *Bentley*, 94 S.W.3d at 581. Flores-Demarchi's statement cites specific "facts" that he alleges supports this statement. CR165, CR495 ("unlawful crimes committed by a pervert posing as a CHILD PSYCHOLOGIST"). That this statement purports to be grounded in fact appears to be undisputed: Flores-Demarchi's brief admits that this statement is based on "an allegation of sexual assault made by a member of the Sharyland High School swim team." Br. at 38.

Again, this statement is false. Plaintiffs provided testimony denying this allegation: "Any sexual assault claims were investigated by our administration and legal counsel and/or law enforcement." CR548; *see also* CR543. Thus, like with the statement regarding corruption, a factfinder could easily conclude that all of the Facebook Posts referencing sexual assault are false. *See Bentley*, 94 S.W.3d at 581.

Furthermore, this statement is plainly defamatory *per se*. "Accusing someone of a crime . . . or of engaging in serious sexual misconduct are examples of defamation *per se*." *Lipsky*, 460 S.W.3d at 596. Accusing Plaintiffs of covering up a crime involving sexual assault plainly falls within this rule. *See id.*

Flores-Demarchi appears to argue that this statement is not defamatory because one case held that the phrase “sexual predator,” is “insufficient to warrant defamation *per se*.” Br. at 37. Flores-Demarchi misstates the holding of that case.⁶ That case had no factual allegations connected with the accusation; the NextDoor Post there *only* stated “Vote for a sexual predator?” *Mogged v. Lindamood*, No. 02-18-00126-CV, 2020 WL 7074390, at *3 (Tex. App.—Fort Worth Dec. 3, 2020, pet. denied). *Mogged* merely held that, without any factual assertions to connect to that claim, the term “sex predator” is simply a statement of opinion that cannot support a defamation *per se* claim. *Id.* Flores-Demarchi acknowledges, however, that this statement is based on specific factual allegations. *Mogged* is simply inapposite.

Because Flores-Demarchi’s statement regarding sexual assault is based on specific factual allegations, which are false, and not a protected statement of opinion.

c. Flores-Demarchi’s other arguments do not withstand scrutiny.

Flores-Demarchi makes two other arguments to support his argument that his statements are merely protected statements of opinion. Neither are consequential.

⁶ It is unclear whether that case accurately states the law anyway—there apparently were no other “Texas case interpreting” that issue and the Court only made the observation that Flores-Demarchi references as an alternative holding. *See Mogged*, 2020 WL 7074390, at *16.

First, Flores-Demarchi cites several authorities that he claims supports his position that his Facebook Posts are protected statements of opinion. He spends much energy discussing *Entravision Communications Corporation v. Salinas*, 487 S.W.3d 276 (Tex. App.—Corpus Christi 2016, pet. denied), Br. at 28-29, as supporting his argument. That fact-bound case is wholly inapposite. The Facebook Post at issue in *Salinas* only discussed the plaintiff’s father—not the plaintiff. It is not surprise, in that context, that *Salinas* held that the Facebook Post alone did not support the statement that the Plaintiff “as Arturo’s son, personally engaged in any criminal conduct.” *Salinas*, 487 S.W.3d at 284-85. In this case, however, the Facebook Posts are directed at Plaintiffs, *see infra* at 31-33, not their parents. *Salinas*’ rationale is inapposite.

The other cases are also inapposite because they arose from a trial in which a factfinder made a fact finding after weighing the evidence regarding whether a statement was defamatory. *Burnaman v. J. C. Penney Co.*, 181 F. Supp. 633, 637 (S.D. Tex. 1960) (bench trial); *Billington v. Houston Fire & Cas. Ins. Co.*, 226 S.W.2d 494, 495 (Tex. Civ. App.—Fort Worth 1950, no writ) (“went to trial”) (cited at Br. at 29). These decisions are, plainly, inapposite to the question before the Court in this procedural stance: not whether evidence supports the factfinder’s factual finding, but rather whether Plaintiffs showed a *prima facie* case of defamation. *See* TEX. CIV. PRAC. & REM. CODE § 27.005(c).

Flores-Demarchi's other argument fares no better. While he argues that "Plaintiffs have not shown that Implications (1) and (2) are false," Br. at 48, the very next clause of the sentence—"except by their denials," *id.*—disproves his argument. A Plaintiffs' testimony is evidence to establish a *prima facie* case of defamation. *See* TEX. CIV. PRAC. & REM. CODE § 27.005(c). That is all that is required right now.

* * *

Both statements, when considered in their entirety, are based on verifiable statements of fact. Accordingly, Plaintiffs alleged a *prima facie* defamation claim. TEX. CIV. PRAC. & REM. CODE § 27.005(c). The trial court correctly denied Flores-Demarchi's TCPA motion on the ground that his statements were protected opinion.

2. A factfinder could determine that the Facebook Posts were not merely satire or hyperbole.

Flores-Demarchi had no hesitation making unsubstantiated, false accusations online or physically confronting the targets of online campaign, CR552-53; *see* CR537. Now that he faces potential civil liability for his online hubris, however, Flores-Demarchi attempts to put on the mantle of a "internet commentor." Br. at 40. He now claims that some of the Facebook Posts were merely satire or hyperbole.

Whether a statement is protected as "satire" depends on "whether the publication could be reasonably understood as describing actual facts." *New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 156-57 (Tex. 2004). Again, the entirety of the Facebook Posts must be considered. *Scripps*, 573 S.W.3d at 790-91.

Flores-Demarchi's urging that his Facebook Posts not be taken seriously is largely answered by the procedural posture of this case. Whether a statement is merely "satire" or understood as describing "actual facts" is often for a jury. *Isaacks*, 146 S.W.3d at 156-57. "Whether a publication is capable of a defamatory meaning is initially a question for the court[,] [b]ut when a publication is of ambiguous or doubtful import, the jury must determine its meaning." *Id.* at 155. Often courts "determine that a statement is capable of at least one defamatory and at least one non-defamatory meaning. When that occurs, 'it is for the jury to determine whether the defamatory sense was the one conveyed.'" *Tatum*, 554 S.W.3d at 632.

The satire/hyperbole issue should be left to the jury. Given Flores-Demarchi's past history—and his admission that many of the Facebook Posts are not satire or hyperbole—a fact question easily exists regarding whether his statements could "be reasonably understood as describing actual facts." *See Isaacks*, 146 S.W.3d at 155.

The only specific Posts (Posts 6, 7, and 10) that Flores-Demarchi claims are satire or hyperbole are relevant to the statement that "Plaintiffs are corrupt public officials who have committed crimes for which they have not been held to account." CR175-76. Because each of the Posts occurred in the context of references to specific alleged occurrences, *supra* at 19-27, a factfinder could easily find these specific Posts to "be reasonably understood as describing actual facts," *Isaacks*, 146 S.W.3d at 156.

Furthermore, it is uncontested that several related Facebook Posts—including several that reference alleged specific real-life events—were not satire or hyperbole.⁷ Flores-Demarchi’s spin of his months-long campaign as merely satire or hyperbole doesn’t settle the issue as a matter of law. A jury must decide the issue.

Flores-Demarchi’s arguments regarding specific Posts are wrong anyway. He grossly misstates the context of the specific Posts he addresses. Consider, for example, Post 6, which accuses Plaintiffs of a “precise” “Electioneering Illegality”:

When youre so comfortable committing fraud that you don’t even realize you’re doing it anymore.. . . . JOHN H. SHARY
ELEMENTARY PARENTS WERE GIFTED AN ILLEGALITY . . .
ELECTIONEERING ILLEGALITY TO BE PRECISE!!!! . . . BUT its
not the first time #ElectioneeringViolations occur.

CR167, CR500 (Post 6).

Flores-Demarchi tells the Court that this Post, and a similar allegation in Post 7, CR167, CR501, “is political hyperbole.” Br. at 32, *see id.* at 40-41. This post, however, was made within the same month as two other Posts that indisputably contain specific references to alleged election law violations. CR166, CR498 (Post 4); CR168, CR503 (Post 9). When considering this context, Post 6 can easily “be reasonably understood as describing actual facts.” *Isaacks*, 146 S.W.3d at 156-57.

⁷ Flores-Demarchi also does not contest that he made several Facebook Posts (specifically Posts 1 and 2) that were not satire or hyperbole regarding his statement that Plaintiffs are complicit in or supporters of sexual assault.” Furthermore, he does not contest that several of the Facebook Posts giving the false factual basis for his statement that Plaintiffs are corrupt (namely Posts 9 and 16) were not satire or hyperbole.

Similarly, Flores-Demarchi claims that Statement 10, which accuses Plaintiffs of violating the “Racketeer Influenced and Corrupt Organizations Act,” and references a “retired FBI agent[’s] . . . forensic accounting investigation,” CR 168-69, CR506, is merely satire. Br. at 33. That’s debatable. There surely is “one defamatory . . . meaning” to this specific allegation, so a “jury [should] determine whether the defamatory sense was the one conveyed.” *Tatum*, 554 S.W.3d at 632.

Unsurprisingly, Flores-Demarchi has no real authority to establish that an accusation of a specific criminal statute, referencing a supposed FBI investigation, is merely satire. So he turns to a blog—“Popehat.” Br. at 33. Without any apparent hesitation, Flores-Demarchi invites this Court to hold that the musing of that “group blog”—whose claim to fame is that it publishes blog posts “about *whatever its authors want*”—settles the meaning of a statement as a matter of law. About, Popehat, <https://www.popehat.com/about/>. In doing so, he doesn’t even accurately represent the blog. While he claims Popehat establishes that an allegation of a RICO violation is “like a rhetorical exclamation point in discussing politics,” Br. at 33, “Popehat” actually comes to the opposite conclusion, noting that such an allegation is often used as a “scare tactic” and “tool” to defame a person:

But mostly I think it’s a scare tactic and a propaganda tool, as its idiotic rhetorical misuse suggests. Lawyers bring RICO claims so they can say “the defendant’s behavior is so criminal that we sued them for RICO!” . . . It doesn’t mean that. . . . It doesn’t mean those facts are true.

Ken White, *Lawsplainer: IT'S NOT RICO, DAMMIT*, Popehat (June 14, 2016), <https://www.popehat.com/2016/06/14/lawsplainer-its-not-rico-dammit/>.

Even if “Popehat” was wrongly read, not as confirming that alleging a RICO violation is a deliberate “tool” to (often falsely) defame a person, but as urging a non-defamatory meaning of a “RICO violation,” a blog doesn’t establish anything as a matter of law. A jury is free to reject this characterization.

A defendant’s claim that his statement was merely satire or hyperbole is not a “get out of jail free card” with regard to a defamation claim. A factfinder must determine whether it agrees with the defendant’s characterization in light of the context of the statement, which determines whether the statement could “be reasonably understood as describing actual facts.” *Isaacks*, 146 S.W.3d at 156-57.

All Plaintiffs need to do at this stage is show that there is “enough detail to show the factual basis,” *Lipsky*, 460 S.W.3d at 591, that creates a “*prima facie* case” of defamation. *See* TEX. CIV. PRAC. & REM. CODE § 27.005(c). Plaintiffs have done so. Flores-Demarchi cannot use the TCPA to bypass a jury on this fact-bound issue.

3. Each of the Facebook Posts refers to Plaintiffs.

Flores-Demarchi argues that several of the Facebook Posts are not defamatory because they do not use Plaintiffs’ names. That argument misstates the legal rule. Each of the statements could be reasonably understood as referring to the plaintiff, which is all that is needed to support a defamation claim.

“[I]t is not necessary that the individual referred to be named if those who knew and were acquainted with the plaintiff understand from reading the publication that it referred to plaintiff.” *Newspapers, Inc. v. Matthews*, 339 S.W.2d 890, 894 (Tex. 1960). “A defamatory communication is made concerning the person to whom its recipient correctly, or mistakenly but reasonably, understands that it was intended to refer.” RESTATEMENT (SECOND) OF TORTS § 564 (1977).

When considering the entire context of the Facebook Posts, it is clear that a factfinder could determine that each of these referred to Plaintiffs. For example:

- Several of the Facebook Posts make accusations that the Sharyland ISD school board members were corrupt⁸ or complicit with sexual assault.⁹ Flores-Demarchi does not contest that several contemporaneous Posts specifically reference Plaintiffs. *See, e.g.*, CR171; CR524 (Statement 17: “Melissa Smith (board member) is financially benefitting from the school business practices”); CR170, CR512 (same with “Stuart,” *i.e.*, Pepe Garcia); CR172, CR528 (“Mellisa is a supporter of SEXUAL ASSAULT.”); CR172, CR528 (same with “Pepe Garcia”). Given this context, a factfinder could conclude that the general allegations regarding the school board are directed at Plaintiffs specifically. *Cf. Matthews*, 339 S.W.2d at 894.
- Several Facebook Posts make accusations against “Waldo.”¹⁰ Plaintiffs allege that “#WALDO refers to Plaintiff Melissa Smith.” CR176. Defendant testified that “Waldo” refers to Melissa Smith. CR438-39; *see* Br. at 32 (Plaintiff Smith [is] identified by the nickname ‘Waldo’”).

⁸ Post 2 (Br. at 30), Post 3 (*id.*), Post 5 (*id.* at 31); Post 8 (*id.* at 32); Post 10 (*id.* at 32-33); Post 12.

⁹ Post 1, Post 2 (Br. at 30).

¹⁰ Post 6 (Br. at 31, 38); Post 7 (*id.* at 32), Post 9 (*id.*); Post 13.

- Several Facebook Posts make accusations against “Stuart.”¹¹ Plaintiffs allege that “#STUART refers to Plaintiff Pepe Garcia.” CR176. Defendant testified that “Stuart” refers to Pepe Garcia. CR433-43, CR465.
- Several Facebook Posts make accusations against “Marie Antoinette.”¹² Plaintiffs allege that “#marieantoinette also refers to Plaintiff Melissa Smith.” Defendant testified that “Marie Antoinette” refers to Melissa Smith. CR453. Indeed, Flores-Demarchi’s briefing acknowledged that this reference “plausibl[y]” could be Plaintiff Smith. CR201.
- Finally, Defendant testified that Post 4 is directed against the Sharyland ISD school board. CR373. That Post compares “exit138”—a reference to the Sharyland ISD school board—to a man named “Kenny” who was indicted for various crimes. *Id.* Defendant’s argument that this Facebook Post is only directed at “Kenny,” not one of the Plaintiffs, Br. at 30, simply misstates the Post.

Each of the statements could be reasonably understood as referring to the plaintiff.¹³ That is sufficient. *Matthews*, 339 S.W.2d at 894. Flores-Demarchi’s argument that several of the Posts do not use the Plaintiffs’ legal names does not demonstrate that Plaintiffs have failed to allege a *prima facie* defamation claim and cannot support reversal. TEX. CIV. PRAC. & REM. CODE § 27.005(c).

¹¹ Post 11; Post 14; Post 18.

¹² Post 15; Post 16; Post 18.

¹³ The “Voters Against Sexual Assault” Posts with the “red X over [both Plaintiff’s] face[s],” CR172-73; CR528-34, are relevant for this reason. These Posts come in the context of identifying who Flores-Demarchi claims “is a supporter of SEXUAL ASSAULT.” CR172; CR528 (That Post “[i]ncludes photo of Plaintiff Melissa Smith with a red X over her face.”). Given that a nearly identical Facebook Post that “includes photo of Plaintiff Pepe Garcia with red X over his face” was posted on the same day, CR173; CR530, a factfinder could easily conclude that this photo was also meant to make the same accusation against Garcia.

D. Flores-Demarchi's statements caused Plaintiffs' damages (Element 4).

Flores-Demarchi also argues that Plaintiffs provide “insufficient prima facie proof of damages.” Br. at 48. This argument is both legally and factually wrong.

Most importantly, Flores-Demarchi's argument cannot support dismissal on a legal basis because Plaintiffs allege that the statements are defamatory *per se*. “Defamation *per se* refers to statements that are so obviously harmful that general damages may be presumed.” *Lipsky*, 460 S.W.3d at 593. Thus, a plaintiff need not plead or prove damages for a defamation *per se* claim. *Id.* “Pleading and proof of particular damage is not required to prevail on a claim of defamation *per se*, and thus actual damage is not an essential element of the claim to which the TCPA's burden of clear and specific evidence might apply.” *Id.* at 596.

The allegations at issue—accusations of corruption based on allegations of criminal conduct and complicity in sexual assault—are classic examples of defamation *per se*. “Accusing someone of a crime, of having a foul or loathsome disease, or of engaging in serious sexual misconduct are examples of defamation *per se*.” *Id.* at 597. Similarly, “[r]emarks that adversely reflect on a person's fitness to conduct his or her business or trade are also deemed defamatory *per se*.” *Id.* The Supreme Court has expressly held that “[a]ccusing a public official of corruption is ordinarily defamatory *per se*.” *Bentley*, 94 S.W.3d at 582.

Because accusations of corruption based on specific allegations and of complicity in sexual assault support a claim for defamation *per se*, Plaintiffs are not required to provide proof of actual damages. *See Lipsky*, 460 S.W.3d at 598.

Flores-Demarchi emphasizes—in bold print—that “defamation *per se* damages are not applicable” because cases citing the defamation-by-implication doctrine are “by definition, defamation *per quod* because they require extrinsic evidence.” Br. at 46. We have already discussed, at length, why this argument is wrong. *Supra* at 13, 15-18. The Court can end the analysis of the damages issue here.

To the extent evidence of damages is required, however, Plaintiffs have sufficiently alleged that they have suffered damages. Plaintiffs allege that they suffered “severe mental anguish and torment, and damage to their reputations.” CR177. These are classic defamation damages. *See Lipsky*, 460 S.W.3d at 596. Furthermore, Plaintiffs have proof of these particular damages. Plaintiffs testified:

Mr. Flores-Demarchi’s Posts have caused me harm. For more than a year, his unrelenting attacks on my character and reputation have caused me great anguish, anxiety and anger. I have worked hard all of my life to be a good daughter, spouse, mother, friend, and now a grandmother. In giving back to the community I love, and which has given me and my family so much, I gave the voters an opportunity to choose me to serve them as a board member of the Sharyland ISD. I gladly served as an elected public servant, striving to make the best decisions for the school district. I served with dignity and integrity. To have Mr. Flores-Demarchi accuse me of corruption and crimes, not once, not twice, but again, and again, and again, has brought me great pain, public humiliation and embarrassment. It has strained my relationships with others.

CR553; *see* CR546.

These facts demonstrate how Flores-Demarchi’s “false and defamatory statements exposed Plaintiffs to hatred, contempt, ridicule and disgrace.” CR175.

Flores-Demarchi’s other damages arguments cannot support dismissal. Ignoring the evidence that Plaintiffs provided, Flores-Demarchi first employs the wrong standard of review, arguing—without citation to any authority—that this evidence is insufficient because it does not constitute “tangible evidence” of damages. Br. at 47. “Tangible evidence” is not the standard. All that is required is that Plaintiffs make a *prima facie* showing to support their defamation claim. TEX. CIV. PRAC. & REM. CODE § 27.005(c). Plaintiffs have done so.

Additionally, the details that Flores-Demarchi demands—details for which he cites no Texas authority establishing that they are required—are provided. For example, Flores-Demarchi claims that the evidence does not show that his defamatory statements caused Plaintiffs “loss of friends, or even the loss of esteem in the community.” Br. at 47. That is simply untrue. Plaintiffs testify that his statements have caused them “public humiliation and embarrassment” and “strained [their] relationships with others.” CR553; *see* CR546.

Finally, almost as an afterthought, Flores-Demarchi claims that Plaintiffs “are simply libel proof.” Br. at 50. This argument suffers from waiver issues, legal issues, and factual issues.

First, this argument is waived. It was not raised in his TCPA motion to dismiss. It was a new ground raised for the first time in his Reply, and even then, this argument was made in passing and was completely undeveloped. CR940-41.

Second, Flores-Demarchi misconstrues the state of Texas law regarding the “libel proof” doctrine. Flores-Demarchi cites *McBride v. New Braunfels Herald-Zeitung*, 894 S.W.2d 6 (Tex. App.—Austin 1994, writ denied) as recognizing the doctrine, but that case reserves judgment on that question. *Id.* at 10 (“Assuming, without deciding, that [Texas] accepts the libel-proof plaintiff doctrine”).

McBride confirms that there is serious reason to doubt whether the “libel proof” doctrine is consistent with Texas law. Other states have rejected the doctrine as a “fundamentally bad idea.” *Id.* at 9. The typical rule does not provide for dismissal when a plaintiff has a diminished reputation: “evidence of a . . . diminished reputation has traditionally been allowed in mitigation of actual damage.” *Id.*

This stems from the principle that even a tarnished reputation can be further damaged. “The law presumes that one possesses good character and that even the limited good reputation of a person of bad character could be worse.” *Id.* at 10. “There are few so impure that cannot be traduced.” *Finklea v. Jacksonville Daily Progress*, 742 S.W.2d 512, 516-17 (Tex. App.—Tyler 1987, writ dism’d w.o.j.). Texas law has, thus, “vigorously guarded the right . . . to defend [one’s] reputation, however tarnished, from libelous publications.” *McBride*, 894 S.W.2d at 10.

Flores-Demarchi does not argue why Texas should completely dismiss a case based on diminished reputation. The Court should apply the typical rule and allow the parties to argue the impact of any “diminished reputation” to the jury.

Even if the libel proof plaintiff doctrine is a complete defense, Flores-Demarchi has put forward none of the evidence necessary to support applying this doctrine. “It is clear that the doctrine should have only a limited application” *Finklea*, 742 S.W.2d at 516. “To justify applying the doctrine, the evidence of record must show not only that the plaintiff engaged in criminal or anti-social behavior in the past, but also that his activities were widely reported to the public.” *McBride*, 894 S.W.2d at 10. “The evidence on the nature of the conduct, the number of offenses, and the degree and range of publicity received must make it clear, as a matter of law, that the plaintiff’s reputation could not have suffered from the publication of the false and libelous statement.” *Id.* The person’s previous conduct must be “so extreme that no reasonable person could find further damage to his reputation by the false accusation of a new [defamatory allegation].” *Id.* at 10-11.

It is not hard to imagine a case in which this doctrine would apply. Imagine Larry Nassar, claiming that one particular allegation of sexual assault was false, sued the women who made that claim for defamation. Nassar, notoriously convicted of sexually abusing countless women, is not damaged by one additional—even if false—claim. That is the context in which the libel proof plaintiff doctrine applies.

This case, however, is not the case of a defamation case based on one claim among hundreds against Larry Nassar. Flores-Demarchi made no effort to provide any of the details—number of offenses, degree and range of publicity, and so forth—that are necessary to support this defense.

The only evidence Flores-Demarchi cites in support of this argument cannot be considered anyway. He cites a single Facebook Post that he attached to his Reply in the trial court. Br. at 50 (citing CR960-61). This evidence is obviously insufficient because it does not provide the details required. Just as importantly, it was untimely filed and, thus, not part of the TCPA record. CR1004-08. Flores-Demarchi makes no effort to show the trial court should have considered this evidence, and it should not have for the reasons we discussed below. *See id.* The Court, therefore, cannot rely upon it to establish that Plaintiffs are libel proof.

Plaintiffs’ defamation claim is supported by clear and convincing evidence of damages. The trial court rightly rejected Flores-Demarchi’s damages arguments.

E. Flores-Demarchi acted with actual malice.

Flores-Demarchi also asserts that Plaintiffs “provided no specific instances or evidence . . . which would have shown such actual malice” Br. at 43. This argument simply ignores both the law regarding actual malice and the evidence in this case.

“[A]ctual malice means knowledge of, or reckless disregard for, the falsity of a statement.” *Bentley*, 94 S.W.3d at 591. The Supreme Court has explained “reckless disregard” in the defamation context as follows:

Reckless disregard, according to the Supreme Court, is a subjective standard that “focus[es] on the conduct and state of mind of the defendant.” It requires more than “a departure from reasonably prudent conduct.” Mere negligence is not enough. There must be evidence ““that the defendant in fact entertained serious doubts as to the truth of his publication,”” evidence “that the defendant actually had a ‘high degree of awareness of . . . [the] probable falsity’” of his statements.

Id.

Despite these guidelines, “the phrase cannot be fully encompassed in one infallible definition.” *Id.* “[I]ts outer limits will be marked out through case-by-case adjudication, as is true with so many legal standards for judging concrete cases.” *Id.* at 592. Thus, a defendant’s “testimony that he believed what he said is not conclusive, irrespective of all other evidence.” *Id.* at 596. Instead, the “evidence must be viewed in its entirety,” and “[t]he defendant’s state of mind can—indeed, must usually—be proved by circumstantial evidence.” *Id.*

Actual malice is shown when a defendant (1) “motivated by a desire to avoid the truth,” (2) departs from (3) his “usual practice” of “investigat[ing] the facts”:

[F]ailure to investigate the facts before speaking as a reasonably prudent person would do is not, standing alone, evidence of a reckless disregard for the truth, but evidence that a failure to investigate was contrary to a speaker’s usual practice and motivated by a desire to avoid the truth may demonstrate the reckless disregard required for actual malice.

Id. at 591; *see also Freedom Newspapers of Tex. v. Cantu*, 126 S.W.3d 185, 194 (Tex. App.—Corpus Christi 2003), *rev'd on other grounds*, 168 S.W.3d 847 (Tex. 2005) (cited Br. at 43 n.102) (recognizing this method of demonstrating actual malice).

Plaintiffs satisfy this standard.

1. Flores-Demarchi intended to avoid the truth.

First, Plaintiffs show that Flores-Demarchi had a desire to avoid the truth because he was motivated by animus against Plaintiffs. Plaintiffs allege that Flores-Demarchi “has a manifest problem with authority” and “maintains a personal page on Facebook, which he seems to dedicate, in large part, to attacking those in positions of authority.” CR163. “By dedicating most of his social media posts to tormenting Plaintiffs, Defendant is intentionally trying to subject them to public hatred and distain.” CR174.

Flores-Demarchi targets “the Sharyland ISD superintendent and its school board members.” CR164. He has devoted “[m]any of his posts the past year [to] express his (often) brash views and opinions about Sharyland ISD’s administration and school board.” *Id.* Flores-Demarchi has been given “every opportunity to retract and mitigate” his most egregious posts, but he has “steadfastly refuse[d]” to do so. *Id.* This animus has caused him to conduct “a concerted, public effort to use deliberately false statements to defame and cause harm to Plaintiffs.” *Id.*

The Court need not take Plaintiffs' word that Defendant is acting with malice toward Plaintiffs. Flores-Demarchi himself testified that he intended to "draw[] attention" to Plaintiffs:

Q. And you are drawing attention—you're calling this to the attention of all the Sharyland community and beyond, right?

A. Uh-huh.

Q. Is—was that your intent?

A. Yes.

CR360; CR455 ("I was" trying to convey that Melissa Smith was corrupt); CR436 (Defendant "[i]ntended to convey the politics of the school board. Intended to criticize by hyperbolizing sort of what was happening at Sharyland . . .").

Defendant acknowledged that he "had formed my own opinions from personal encounters with [the school board] and how they handled other things with my family." CR378-79. "[G]iven [his] history with the school," Defendant testified that he believed that "any speculation and public discourse would be healthy for the community." CR381.

Importantly, Flores-Demarchi did not "care" if the factual basis for his statement that Plaintiffs were corrupt was true. He testified that, despite claiming that Plaintiffs were "somehow financially benefiting from selling these three trucks to the school," he did not know that she actually "lost money"—"*nor did [he] care.*" CR455 (emphasis added).

Defendant testified that he is “not saying that I completely believe” his own Facebook Posts. CR388-89. The truth was not important. Sometimes he did not understand what he was posting—“maybe I didn’t get it entirely, but” that was not the main concern. CR473. His main concern was spreading the message—“maybe it would help someone else have the point”—that the Plaintiffs were corrupt. *Id.*

This is direct proof of an intent to avoid the truth. Additionally, these allegations and this evidence can be used to show that Flores-Demarchi held animus toward Plaintiffs, and thus, as circumstantial proof that he was “motivated by a desire to avoid the truth” in his failure to investigate the truth of his allegations. *Bentley*, 94 S.W.3d at 591. Notably, he does not grapple with this evidence at all.

The first part of this method of showing actual malice is satisfied.

2. Flores-Demarchi did not investigate the truth.

Next, Flores-Demarchi did not investigate the facts. Defendant testified that he had no evidence to support any of the Facebook Posts:

Q. So I take it the answer to my question is you have no evidence that would support this statement that was reposted?

. . . .

A. I have—that I have no evidence?

Q. Right.

A. I mean, I—I personally have no physical documentation, but that goes for all the rest of them, as well, not just this one.

CR357; CR358 (“I have no concrete proof”); CR381 (“I honestly don’t remember” if he had evidence to support his allegations); CR420-21 (“I didn’t do homework.”).

Instead, Defendant testified that “I just trust[ed] my friends.” CR356. For him, verifying that the statements were true was “someone else’s job, right?” CR423-24. “I did not feel the need to, like, corroborate them.” CR404.

The second part of this method of showing actual malice is satisfied.

3. Flores-Demarchi departed from his typical practice of investigating the truth.

While Flores-Demarchi is right that, on its own, a failure to investigate the truth of the Facebook Posts is not enough to show actual malice, Br. 43, failure to investigate can be show actual malice if such a failure “was contrary to a speaker’s usual practice” *Bentley*, 94 S.W.3d at 591. The evidence establishes that last part of this method of showing actual malice.

Flores-Demarchi’s failure to investigate was contrary to Defendant’s usual practice. Defendant repeatedly referred to himself as an “aspiring educator.” *See, e.g.*, CR458. As an “aspiring educator,” he believes that reflection and questioning oneself until he “know[s] it’s pretty grounded” in fact is important:

I think—like I said, I think it was, again, exemplifying the type of like reflection and discourse that I tried to invoke out of, like, students and, like, any learner that, like, you should always question your beliefs. And if something seems wrong, to question it even more until you questioned it so much that you know it’s pretty grounded in something.

CR463.

Despite Defendant's typical practice of questioning something until he "know[s] it's pretty grounded in" truth, *id.*, he did nothing to corroborate the truth of these Facebook Posts. A jury could rely on this deviation from Defendant's typical practice as evidence of actual malice.

The third part of this method of showing actual malice is satisfied.

* * *

Plaintiffs have shown a *prima facie* case that Flores-Demarchi acted with actual malice by departing from his normal practice of investigating the truth. Flores-Demarchi does not engage this method of showing actual malice¹⁴ or the evidence supporting it. He can try to convince a jury to believe his denials of malice toward plaintiffs, *see* Br. at 44 (citing CR870-71), but those allegations not overcome the evidence that Plaintiffs provided to create a *prima facie* defamation claim. TEX. CIV. PRAC. & REM. CODE § 27.005(c); *see Lipsky*, 460 S.W.3d at 590 (Plaintiffs only need to provide "evidence sufficient as a matter of law to establish a given fact if it is not rebutted or contradicted.").

¹⁴ Flores-Demarchi appears to claim that there is only one way to demonstrate actual malice. Br. at 43. That is simply not the law. While "inherently improbable assertions and statements made on information that is obviously dubious *may* show actual malice" is one way to show actual malice, it is not the only way. *Hearst Corp. v. Skeen*, 159 S.W.3d 633, 638 (Tex. 2005) (emphasis added). Actual malice is not a one-size-fits-all test. *Bentley*, 94 S.W.3d at 591 (Actual malice "will be marked out through case-by-case adjudication . . .").

F. Flores-Demarchi’s undeveloped affirmative defenses cannot support reversal.

Next, Flores-Demarchi briefly asserts three affirmative defenses: substantial truth, conditional privilege, and fair report privilege. Br. at 41-42; 48-51.

None of the arguments or evidence related to these defenses is developed. The Court can easily reject these arguments at this stage of the litigation because Flores-Demarchi, as the “moving party” did not “establish[] an affirmative defense . . . as a matter of law.” TEX. CIV. PRAC. & REM. CODE § 27.005(d).

In any event, the arguments discussed at length above defeat Flores-Demarchi’s affirmative defenses. The statements are false, so the substantial truth defense cannot support dismissal. *Supra* at 19-27. And the statements were made with “actual malice,” so they cannot be made in “good faith,” as Flores-Demarchi acknowledges is required for the conditional privilege defense. Br. at 48; *Holloway v. Tex. Med. Ass’n*, 757 S.W.2d 810, 814 (Tex. App.—Houston [1st Dist.] 1988, writ denied).

For the first time on appeal, Flores-Demarchi develops the final affirmative defense—the “fair report” privilege. But he badly misses the mark with this defense.

The typical rule—one Flores-Demarchi does not cite in his brief—is the “well-settled legal principle that one is liable for republishing the defamatory statement of another.” *Neely v. Wilson*, 418 S.W.3d 52, 61 (Tex. 2013).

The fair report privilege is a limited exception to that rule, which simply does not apply to the subject-matter of his Facebook Posts. This privilege is based on Restatement Section 661. *Freedom Communications, Inc. v. Coronado*, 296 S.W.3d 790, 797 (Tex. App.—Corpus Christi 2009), *rev'd on other grounds*, 372 S.W.3d 621 (Tex. 2012). The Restatement limits the fair report privilege to a report *of an official meeting*. RESTATEMENT (SECOND) OF TORTS § 611 (1977). And, then, the privilege only exists if the “report of an official action or proceeding . . . is accurate and complete or a fair abridgement of the occurrence reported.” *Scripps*, 567 S.W.3d at 21. The rationale for this privilege is that individuals are entitled to rely upon “official records and documents open to the public are the basic data of governmental operations” as truthfully conveying the actions of the government. *Coronado*, 296 S.W.3d at 798 n.9.

Flores-Demarchi cannot prevail on that privilege because he did not merely give an “accurate and complete” “report of an *official* action.” Br. at 41-42 (collecting authorities). He doesn’t claim to report an official government action; he claims he is entitled to this defense because he is merely “republishing the material from Red’s Voice for further comment” *Id.* at 42. “Red’s Voice” is not a “report of an official action or proceeding or of a meeting open to the public.” RESTATEMENT (SECOND) OF TORTS § 611 (1977). This privilege simply doesn’t apply.

Additionally, Flores-Demarchi cannot show that Facebook Posts from “Red’s Voice” is an “accurate and complete or a fair abridgement” of anything, *id.*, because the allegations are false. *Supra* at 19-27. The “fair report” privilege doesn’t apply.

Flores-Demarchi did not establish his affirmative defenses as a matter of law, thus, they cannot support reversal. TEX. CIV. PRAC. & REM. CODE § 27.005(d).

II. Federal law does not preempt Plaintiffs’ defamation claim.

Flores-Demarchi argues that a defamation claim based on several of the Facebook Posts is preempted by Section 230 of the Communications Decency Act. Section 230 provides that “users” cannot be liable “any information provided by another information content provider” on the internet—because those Facebook Posts merely “share” another Facebook Page’s Posts. Section 230 does not preempt Plaintiffs’ defamation claims because (1) Plaintiffs’ defamation claim does not depend solely on these shared Facebook Posts and (2) Flores-Demarchi is being sued because of the information that *he* provided on Facebook.

The Court can make quick work of this issue because Flores-Demarchi misstates the reason the “shared” Facebook Posts are cited. Plaintiffs’ defamation claim is based on two statements created by Flores-Demarchi’s months-long campaign against Plaintiffs. *Supra* at 13-15. The shared Facebook Posts—which are only some of those Posts¹⁵—are part of the context of these two statements.

¹⁵ Posts 1, 4, 6-12, 14-16, 18. Note that Posts 1 and 6 also contain content Flores-Demarchi wrote.

Because Texas law focuses on the statements created by the Facebook Posts as a whole—not a parsing of each individual Facebook Post—the Court need not wade into the academic debate over the reach of Section 230. *Scripps*, 573 S.W.3d at 790-91.

Flores-Demarchi responds by arguing that these two statements “cannot arise solely from the original publications by Mr. Flores-Demarchi.” Br. at 56. That misstates the record. Flores-Demarchi directly stated in Posts he wrote (rather than shared) that Plaintiffs are “complicit in sexual assault” (his original content in Post 1) and “bulldoze over sexual assault survivors” (Post 2). CR165; CR496. His original (rather than shared) Posts state that Plaintiffs “have been corrupted” (Post 3 (CR165; CR497)), and provide the key factual detail to support that allegation (regarding the “construction contracts” (Post 5 (CR166, CR499))). The two statements do, in fact, arise from Posts Flores-Demarchi wrote (rather than shared). Flores-Demarchi does not engage the actual relevance of the shared Posts.

Flores-Demarchi’s position would be absurd if applied consistently. No one would think, for example, that a person could preface an otherwise defamatory campaign with the phrase “I heard on Facebook” and be protected by Section 230. It cannot be the law that if some of the defamation originated on Facebook then a defamation claim is preempted.

Second, Flores-Demarchi is wrong about Section 230 anyway. That regulation protects a “provider” or “user” of a website, like Facebook, when the challenged communication is “information provided by another information content provider”:

[N]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

47 U.S.C. § 230(c)(1).

Section 230 contains three elements: “(1) [Defendant] is a provider or user of an interactive computer service, (2) the claim is based on information provided by another information content provider and (3) the claim would treat [Defendant] as the publisher or speaker of that information.” *La Liberte v. Reid*, 966 F.3d 79, 89 (2d Cir. 2020). The merits of Flores-Demarchi’s preemption argument turns on the second element—whether Plaintiffs’ defamation claim is based on information *provided by another* or information *provided by Flores-Demarchi*.

This issue is a novel one. Section 230 is primarily intended to protect service providers—like Facebook—from liability from its user’s posts on its forum; *i.e.* to bar “lawsuits seeking to hold a service provider liable for its exercise of a publisher’s traditional editorial functions—such as deciding whether to publish, withdraw, postpone, or alter content.”” *La’Tiejira v. Facebook, Inc.*, 272 F. Supp. 3d 981, 992 (S.D. Tex. 2017).

In the context of a suit against the entity hosting the service, a party “complaining that they were harmed by [the] publication of user-generated content” may not sue “the interactive computer service that enabled them to publish the content online.” *Id.* at 993. Most of the case law Flores-Demarchi cites comes from the context of claims against the host of the service. *Cf. id.* at 992; *GoDaddy.com, LLC v. Toups*, 429 S.W.3d 752, 762 (Tex. App.—Beaumont 2014, pet. denied); *Milo v. Martin*, 311 S.W.3d 210, 217 (Tex. App.—Beaumont 2010, no pet.).

Although Flores-Demarchi spends much time discussing this case law, it is factually inapposite. This context is plainly distinguishable from the situation in this lawsuit—a person who goes beyond merely hosting an internet website, and instead takes affirmative steps to post certain content on that forum. Different courts—and different judges on those Courts—have adopted different approaches to claims against a defendant who shared certain content on the forum.

For example, the Second Circuit adopted the “material contribution” test: *i.e.*, that such a user is only subject to liability if the “defendant directly and ‘materially’ contributed to what made the content itself ‘unlawful.’” *Reid*, 966 F.3d at 90; *see Milo*, 311 S.W.3d at 217.

Judge Gould’s separate opinion in a Ninth Circuit case had the best view: that Section 230 “immunizes a defendant only when the defendant took no active role in selecting the questionable information for publication. If the defendant took an active role in selecting information for publication, the information is no longer ‘information provided by another’ within the meaning of § 230.” *Batzel v. Smith*, 333 F.3d 1018, 1038 (9th Cir. 2003) (Gould, J., concurring in part and dissenting in part). This conclusion is rooted in both the text of Section 230 and the real-life impacts of a contrary rule.

From a textual perspective, the shared Facebook Post is no longer “information provided by” the original sender when “the defendant took an active role in selecting information for publication.” *Id.* (quoting 47 U.S.C. § 230(c)(1)). It is now the sharer’s own information. *See id.* A person who shares information online is adding his own approval to that information:

A person’s decision to select particular information for distribution on the Internet changes that information in a subtle but important way: it adds the person’s imprimatur to it. The recipient of information that has been selected by another person for distribution understands that the information has been deemed worthy of dissemination by the sender. Information that bears such an implicit endorsement is no longer merely the “information provided by” the original sender. It is information transformed. It is information bolstered, strengthened to do more harm if it is wrongful. A defendant who has actively selected libelous information for distribution thus should not be entitled to CDA immunity for disseminating “information provided by another.”

Id. at 1038-39.

Not only does this view find support in the plain text of Section 230, but sound policy rationale supports it as well.

[The contrary rule adopted by the majority] licenses professional rumor-mongers and gossip-hounds to spread false and hurtful information with impunity. So long as the defamatory information was written by a person who wanted the information to be spread on the Internet (in other words, a person with an axe to grind), the rumormonger's injurious conduct is beyond legal redress. . . . Nothing in the text, legislative history, or human experience would lead me to accept the notion that Congress in § 230 intended to immunize users or providers of interactive computer services who, by their discretionary decisions to spread particular communications, cause trickles of defamation to swell into rivers of harm.

Id. at 1038.

This result makes practical sense. Why else does a person share a post on social media but to (in some way) endorse the view shared in that post? Why share Facebook Posts making the same basic statements for months if one doesn't share those views? The Fifth Circuit recently demonstrated this. In a recent decision, the Fifth Circuit cited the White House Chief of Staff's retweet of a news article as proof of the Biden Administration's position. *See BST Holdings, LLC, et al v. OSHA*, No. 21-60845, Doc. # 00516091902, at 7 n.13 (5th Cir. Nov. 12, 2021).

Flores-Demarchi wants the Court to believe that he shared various Facebook Posts, but did not endorse their meaning. He claims that "[a] common feature of internet etiquette is that re-posting or sharing another's social media content is not necessarily an endorsement of the content." Br. at 52.

That position is untenable. If a person shares a Facebook Post “for any number of reasons other than endorsement,” *id.* at 57, the person often clarifies with other remarks. Flores-Demarchi’s only authority for his remarkable argument expressly rejects his view: “‘Despite what many say,’ Memmott told NPR staffers, ‘retweets should be viewed AS endorsements.’” Anne Johnson, *The Ethics of Retweeting And Whether It Amounts To Endorsement*, National Public Radio (July 31, 2014), <http://shorturl.at/jkqCS>. In any event, the circumstances discussed below indicate that Flores-Demarchi agreed with the Facebook Posts that he shared.

Under either Judge Gould’s approach or the material contribution approach to Section 230, Plaintiffs’ defamation claim survives.

Under Judge Gould’s view, because Flores-Demarchi shared the information, it is no longer protected by Section 230. *Batzel*, 333 F.3d at 1038 (Gould, J., concurring in part and dissenting in part). Flores-Demarchi doesn’t engage this test.

Additionally, under the material contribution test, Plaintiffs’ defamation claim survives. When looking at the Facebook Posts as a whole, it is clear that Flores-Demarchi satisfied the “material contribution” test. *See Reid*, 966 F.3d at 90; *see Milo*, 311 S.W.3d at 217.

The “material contribution” is Flores-Demarchi’s months-long campaign to disparage Plaintiffs. Flores-Demarchi—even without the “shared” posts—accused Plaintiffs of corruption (*see, e.g.*, Statements 2, 3, 5, 6, 17) and complicity in sexual assault (*see, e.g.*, Statements 1, 2). He acknowledges that these posts are “Dante Flores-Demarchi’s own statements.” Br. at 4. He “directly” and “materially” contributed by not only adding his commentary to some of the shared posts, but also by authoring his own posts that accused Plaintiffs of the same conduct.

Flores-Demarchi has little to say about the material contribution test. He only addresses the contribution that he made directly above the “publication of a Red’s Voice post,” Br. at 59, but he ignores the “material contribution” over his months-long campaign against Plaintiffs.

To be clear, Flores-Demarchi’s “contribution” was not limited to the material directly above any shared Facebook Post. Flores-Demarchi made a material contribution to the defamatory content by (1) directly making the same accusations, (2) making the same basic statements in his own voice, and (3) sharing several Facebook Posts making the same basic statements over a several-month campaign. Whatever the case may be if Flores-Demarchi simply shared one Facebook Post, it is untenable to argue that he merely shared another person’s Facebook Post in light of his months of It strains credulity to argue that this was not a “material contribution.”

Flores-Demarchi also claims that Plaintiffs “misunderstand” his argument, asserting that “[t]he only question for this Court is whether [he] is a ‘user’ within the meaning of Section 230” Br. at 56. He claims that this radical view, which ignores the second element of Section 230, was adopted by California over 15 years ago in *Barrett v. Rosenthal*, 146 P.3d 510, 529 (Cal. 2006). *See* Br. at 55.

Flores-Demarchi’s assertion misstates Section 230—and *Barrett*—and avoids the relevant issue. No one disputes that Flores-Demarchi is a “user” of Facebook; the question is whether the second element of Section 230 is satisfied: that is whether the Posts at issue are “information provided by another content provider” or whether Flores-Demarchi “provided” the information.

Notably, *Barrett* did not address that element of Section 230. The *Barrett* plaintiff did not raise the issue of whether the reposted content was “‘provided’ by another ‘information content provider’ under section 230” *Barrett*, 146 P.3d at 528 & n.20. Thus, *Barrett* performed no analysis on when a shared post is information “provided” by the person sharing the post or information “provided” by another. This case is simply inapposite to the issue before the Court.

Finally, Flores-Demarchi claims that “[b]ecause Plaintiffs abandoned their claims against the publisher of Red’s Voice, Plaintiffs admit they cannot prove those statements, standing alone, are defamatory.” Br. at 34. The legal argument that Flores-Demarchi is trying to make here is unclear in the first place. But this assertion is completely unfounded anyway. The fact that Plaintiff removed the “John Doe” defendant from the petition is no admission. Parties routinely choose which parties to sue or not to sue for various reasons, strategic and legal. Plaintiffs’ decision regarding the John Doe defendant is not a “show[ing]” of anything, Br. at 34. Flores-Demarchi’s speculation on Plaintiffs’ mindset in dismissing those claims is irrelevant.

In short, Plaintiffs’ defamation claim is not preempted by Section 230.

* * *

When Flores-Demarchi’s Facebook Posts are reviewed in their entirety—as Texas law requires—it is clear that a factfinder could find that these Facebook Posts referenced Plaintiffs and they are not merely protected opinion, satire, or hyperbole. Additionally, the preemption argument also becomes moot. These arguments do not demonstrate that Plaintiffs failed to allege a *prima facie* defamation claim. TEX. CIV. PRAC. & REM. CODE § 27.005(c).

III. Any remand should be for attorney's fees only.

One final word is in order. The Court should affirm the trial court's ruling, but if it does not, the Court should remand for consideration of attorney's fees only, not for reconsideration of sanctions.

A remand for sanctions is inappropriate. The TCPA is not, as Flores-Demarchi so colorfully put it, the Code of Hammurabi in which Plaintiffs must "be put to death for placing" their case "before the judges." Br. at 11. The TCPA does not impose mandatory sanctions; the trial court "*may* award . . . sanctions against the party who brought the legal action" TEX. CIV. PRAC. & REM. CODE § 27.009(a)(2) (emphasis added). The trial court simply chose not to impose sanctions.

While Flores-Demarchi erroneously asserts that "the trial court has not had an opportunity to" impose sanctions, Br. at 60, the opposite is true. The parties briefed whether Flores-Demarchi was entitled to TCPA sanctions, *see* CR334-35, and the trial court exercised its discretion and chose not to award sanctions.

Flores-Demarchi gives no reason why this ruling should be overturned. Thus, remand for this purpose is inappropriate.

CONCLUSION AND PRAYER

The Court should affirm the trial court's ruling.

Respectfully submitted,

RAY THOMAS, PC

BECK REDDEN LLP

Raymond L. Thomas
State Bar No. 19865350
rthomas@raythomaspc.com
4900-B North 10th Street
McAllen, Texas 78504
(956) 632-5032
(956) 540-5631 Fax

By: /s/ Nicholas M. Bruno
Nicholas M. Bruno
State Bar No. 24097432
nbruno@beckredden.com
Chad Flores
State Bar No. 24059759
cflores@beckreden.com
1221 McKinney St., Suite 4500
Houston, Texas 77010-2010
(713) 951-3700
(713) 951-3720 Fax

**Attorneys for Appellees,
Melissa Smith and Jose Garcia**

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2021 a true and correct copy of the foregoing Brief of Appellees has been electronically filed and served on all counsel below. *See* Tex. R. App. P. 9.2(c)(1), 9.5(b)(1).

Lane A. Haygood
lane@haygoodlawfirm.com
Haygood Law Firm
522 North Grant Ave.
Odessa, TX 79761

*Attorney for Appellant,
Dante Flores-Demarchi*

/s/ Nicholas M. Bruno

Nicholas M. Bruno

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Tex. R. App. P. 9.4(i)(2)(B) because it contains 13,779 words, excluding the parts of the brief exempted by Tex. R. App. P. 9.4(i)(1).

2. This brief complies with the typeface requirements of Tex. R. App. P. 9.4(e) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14 point Times New Roman font.

Dated: December 8, 2021

/s/ Nicholas M. Bruno

Nicholas M. Bruno

Counsel for Appellees

Tab A

Facebook Posts

Post No.	Second Amended Petition Cite	Clerk's Record Cite	Date
1	CR165	<u>CR495</u>	01/17/2020
2	CR165	<u>CR496</u>	02/21/2020
3	CR165	<u>CR497</u>	09/21/2020
4	CR166	<u>CR498</u>	10/04/2020
5	CR166	<u>CR499</u>	10/19/2020
6	CR167	<u>CR500</u>	10/21/2020
7	CR167	<u>CR501-02</u>	10/21/2020
8	CR168	<u>CR503-04</u>	10/24/2020
9	CR168	<u>CR505</u>	11/05/2020
10	CR168-69	<u>CR506-11</u>	12/28/2020
11	CR169-70	<u>CR512-15</u>	01/11/2021
12	CR170	<u>CR516</u>	01/30/2021
13	CR170-71	<u>CR517</u>	01/30/2021
14	CR171	<u>CR518</u>	02/10/2021
15	CR171	<u>CR519</u>	02/12/2021
16	CR171	<u>CR520-23</u>	04/07/2021
17	CR171	<u>CR524</u>	04/07/2021
18	CR171-72	<u>CR525-27</u>	05/01/2021
19	CR172	<u>CR528-29</u>	01/29/2021
20	CR172	<u>CR530-31</u>	01/29/2021
21	CR173	<u>CR532-33</u>	02/04/2021
22	CR173	<u>CR534-35</u>	02/06/2021



message to get a call back or to relay the message to the super intendent.

They will try to redirect u to a dead end but be persistent in requesting to talk to the superintendent or someone directly under... See More

👍👎 31

14 Comments 17 Shares



Like



Comment



Share



Dante Flores-Demarchi

Jan 17, 2020 · 🌐

few of many cases where sharyland failed to protect its students and left space for things like what happened with pioneers swim team to happen. Sharyland isd is complicit in sexual assault. (also shoutout to the amazing women for using their voice to share their story💕💕)

1:12



Roma Lizcano is 🐼 feeling scared but fed up with Lizzie Garza Lizcano.

19 mins · 🌐

EXAMPLE A: In 2014 at Sharyland High School, a freshman student on the wrestling team was sodomized with a broomstick, similar to what Trevor Heath and others on the swim team are accused of doing. And no one batted an eyelash! It was even made a joke in the school talent show that year.

EXAMPLE B: Sharyland ISD housed and covered up the unlawful crimes committed by a pervert posing as a CHILD PSYCHOLOGIST for DECADES. Robert Codina is still a free man after physically, sexually, verbally, and emotionally abusing multiple of children. We will probably never even know the true number, due to his exposure to thousands of kids after working at MULTIPLE Sharyland ISD elementary schools AND the AEP Institution.

under the rug and treating student with zero fairness. They are not for the students, but against.

👍 A @AlejandraDLG · 3d

I am truly disgusted and disappointed with Sharyland Isd. Trying to keep a "hazing incident" quiet. This was more than hazing. This is sexual assault. Rumor of rape. There are rumors of a video. It happened during school...

Show this thread

3:52 PM · 1/14/20 · Twitter for iPhone

25 Retweets 104 Likes

Mea., @lilimila · 6h
-that's when I decided to tell my cousin who eventually told my guardian; my guardian got really mad and decided to report him because HE WAS 18 and I WAS 15 YEARS OLD. We went to the school, talked to some administrators because the principal couldn't-
Mea., @lilimila · 6h
-I showed them some messages and wanna know what they said? That I was making that up because probably we broke up and I was mad at him, that he wouldn't be capable of that because he was mature, he was in JROTC and he didn't look like he would do that.

Dana Mtz. @dana_mtz · 37m
Do y'all remember when my autistic brother was getting bullied in middle school. And when my mom went to confront the sharyland administration they basically called HIM the problem
Dana Mtz. @dana_mtz · 37m
Then the problem got so bad he said he wanted to hurt himself and others. And instead of addressing the bullying issue he had at school they called my mom "unfit" and called CPS
Dana Mtz. @dana_mtz · 37m
Then CPS said the problem was in the school, so then my mom had to spend A

Rudy @Aranta_18
Replying to @AlejandraDLG
Let's not forget when a kid brought what turned out to be a 1 for 1 replica gun. My brother got suspended more days then the kid +6 had a gun for posting a video.



Robertha Garza Tamez and 183 others

57 Comments 663 Shares



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EXHIBIT

1



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Ray



Robertha Garza Tamez and 38 others

6 Comments

Share

**Dante Flores-Demarchi**

Feb 21, 2020 · 🌐

ATTENTION ALL SHARYLAND COMMUNITY AND BEYOND: After all our exhaustive community efforts and the countless media reporting, Sharyland ISD has failed to respond whatsoever. They shut the blinds on their community desperately pouring onto the street in protest, voicing how Sharyland's grotesque mismanagement of ALL recent events is affecting them, their family, and their child's mental and physical health. They hoped everything would pass, but WE WILL NOT LET THEM BRUSH THESE VOICES UNDER THE RUG! I think they think we would stop by now, but we have not stopped thinking of the next step. There is a board meeting this Monday (2/24) at Pioneer High school. We ask that you please help once again support these voices that they are trying so hard to not hear, but that we are making deafening!! There are a lot of families scared and distraught for the safety of their kids and many community members disgusted at the lengths administrators and school board members will go to cover up their true disappointing image. They will bulldoze over sexual assault survivors in order to build their fantasy cash cow. NO MORE CORRUPTION!! its time to put students first and not faculty and school board members. Please join us on Monday 2/24 at the board meeting at Pioneer High school at 6pm! If they try to silence us, we will take the meeting to the public side walk!!

Elia Edith Mendiola-Salazar and 50 others

6 Comments 19 Shares

Like

Comment

Share

**Dante Flores-Demarchi**

Feb 18, 2020 · 🌐

bitches will talk the most shit about AMLO and not know a single one of his policies like yall r such sheep and it shows

9

2 Comments

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EXHIBIT

2



You

1 Comment 4 Shares

2 Shares



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**Dante Flores-Demarchi**

Sep 21, 2020 ·

Hey guys!! School board elections are coming up and although they may seem insignificant, a lot of comfortable people in power hope that they can get by on the votes of their compadres and that the community won't go out to the polls to hold them accountable. For many years these people have taken advantage of their power and actively used it to undermine justice for teachers, students, and their parents. I ask that you please consider to vote this election cycle for people vying to truly represent the community and for once try a change from the regular, corrupt, and current board members. The deadline to register to vote is October 5th!

long-standing incumbents have been corrupted and need to be replaced!! Remember, these are the people that turned their face away from our community amidst our outcries for transparency and support during all the sexual assault incidents that came to light this past year. Do not allow them to not face consequences for completely ignoring us, our families, and our children. VOTE THEM OUT!

Due to his unwavering fear to speak out against sexual assault cover-ups by Sharyland ISD, I will be voting Alejandro Rodriguez for the seat he is vying for and encourage you guys to do so too!



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EXHIBIT

3



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**Dante Flores-Demarchi**

Oct 4, 2020 · 🌐

HMMMM 🤔🤔🤔 pls read!!!!

**Red's Voice**

Oct 4, 2020 · 🌐

IMPROPER INFLUENCE, ABUSE OF POWER, BRIBES and OTHER POTENTIAL CRIMES, sure sounds like #twiceindicted KENNY is facing a very serious FBI investigation. 🤔

Wonder if REVIEWING and DENYING public information requests for a FINANCIAL AUDIT submitted to #exit138 would constitute said crimes?

On December 30, 2015, The Advance News Journal recapped the year in an article titled Bad News Galore. It is stated a public information request submitted by said NEWSPAPER for #SharylandISD audit was denied even though the community is LEGALLY entitled to SEE IT.

As of now said AUDIT has NEVER PUBLICLY seen the light of day and its refusal to be released is ILLEGAL!!!!!!

Happy Hunting FEDS 😊

*NOTE

Stay tuned for a later recap of #EXIT138 FINANCIAL MESS!

#GotReceipts #IRemember
#VoteThemOut #REIGNOVER #EXIT138
#sharylandisover

<https://news.yahoo.com/texas-ag-ken-paxton-took-001020951.html>

<https://www.texastribune.org/2020/10/03/texas-ken-paxton-bribery-investigation/>



EXHIBIT

4



Dante Flores-Demarchi

Oct 19, 2020 · 🌐

WOAH corruption at Sharyland ISD through construction contracts???

🧐🧐🧐🧐 jk i am not surprised because most corruption in the valley is from school districts misappropriating tax payer money to hook their compadres up with sweet deal construction contracts that rake in huge profits for themselves and at the expense of the tax payer. Of course its all very political but it gets a little overboard when Sharyland is publicly and credibly accused of funneling money to certain construction companies THAT WEREN'T DOING THE WORK THEY WERE BEING PAID FOR. That's our tax money that should be going into our community's kids' education and resources. Mcallen ISD has had laptops as resources for kids (some who might otherwise not have access to such a device because of income status). One might wonder why our "rich" school district mightve put it off for such a long time until COVID came to expose their lack of support for students and specifically low income families of Sharyland ISD. Perhaps they were too busy funneling that tax payer money to pay for construction work that they knew was not being done. Oh wait thats exactly what they were alleged to have been doing.



Red's Voice is 🐾 feeling nostalgic.

Oct 18, 2020 · 🌐

Lets continue the discussion of WHY #EXIT138 should not be

#trusted with ANYMORE BONDS FOR AS LONG AS THOSE 🐾🐾

... See More

Today, July 07, 2015

Text Size

Login/Sign Up

sharylandtimes

A community of the Sharyland Times, only on the internet

HOME NEWS SPORTS GALLERY NEWS STANDS

MISSION — Sharyland High School senior Susana Ortega attends South...

SISD sued by Pioneer contractors

Details

Published: Friday, March 20 2015 07:50

Written by Lea Victoria Juarez

Texas Descon Legal-money filed a lawsuit against the Sharyland Independent School District on March 3 alleging a breach of contract and quantum meruit claims.

The district owes Pioneer High School's contractor \$1,009,928, according to court documents. The two entities entered into a written contract Dec. 14, 2012, under the terms that Descon act as general contractor to the

SOUTH TEXAS VOTER FRAUD SERIES

- Part 1: More than meets the eye?
- Part 2: Setting the scene: Why get involved?
- Part 3: The paper trail and the politiquera system
- Part 4: Procedures, practices and pitfalls = problems
- Part 5: Are you the problem or the solution?
- Part 6: What's Ahead?
- Epilogue: What happened to the evidence?

Do you think it is important to have public notices in newspapers?

KEEP TEXAS NOTIFIED

the \$1,009,928. The suit submitted an affidavit to the court. The affidavit stated that the district had contracted with Pioneer High School for the construction of the district's new high school. The district had contracted with Pioneer High School for the construction of the district's new high school. The district had contracted with Pioneer High School for the construction of the district's new high school.

also stated in the court. The affidavit stated that the district had contracted with Pioneer High School for the construction of the district's new high school. The district had contracted with Pioneer High School for the construction of the district's new high school. The district had contracted with Pioneer High School for the construction of the district's new high school.

The affidavit stated that the district had contracted with Pioneer High School for the construction of the district's new high school. The district had contracted with Pioneer High School for the construction of the district's new high school. The district had contracted with Pioneer High School for the construction of the district's new high school.

Vol 37 News 34 50c JOURNAL Wednesday, August 26, 2015

SERVING MIDALGO COUNTY

Observations By G. Robert Hester

TEXAS DESCON — STIFFING THE SUBS? THIS IS "BIG," SAYS LOCAL ATTORNEY MIGHT CONTRACTOR FACE CRIMINAL RAMIFICATIONS?

By G. Robert Hester

When a contractor is stiffed by a client, it's a common occurrence. But when the client is a school district, the stakes are high. In a recent article, we discussed the case of Texas Descon, a major contractor in the state, who has been accused of stiffing its subcontractors. This time, the stakes are even higher. A local attorney has filed a lawsuit against Texas Descon, alleging that the company has committed criminal offenses. The attorney claims that Descon has used its position as a major contractor to defraud its subcontractors. The lawsuit is the latest in a series of legal actions against Descon, which has been accused of various other crimes in the past.



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EXHIBIT

5



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**Dante Flores-Demarchi**

Oct 21, 2020 · 🌐

When youre so comfortable committing fraud that you don't even realize you're doing it anymore. OOPS

**Red's Voice**

Oct 21, 2020 · 🌐

LMFAO 🤔🤔🤔🤔🤔🤔

ITS NOT EVEN NOON AND I GOT TO START POSTING!!!!!!

JOHN H. SHARY ELEMENTARY PARENTS WERE GIFTED AN ILLEGALITY...

ELECTIONEERING ILLEGALITY TO BE PRECISE 🤔!!!!

According to Texas Elec. Code, school district resources can NOT be used to campaign any candidate, MEASURE or political party.

A message for the bond proposal VIA REMIND & TEXT, which John H. Shary will benefit from, was sent early this morning ENCOURAGING PARENTS TO VOTE YES.

THEN within the hour ANOTHER #MESSAGE IS SENT TO DISREGARD PREVIOUS ILLEGAL #MESSAGE....claiming it was a MISTAKE 🤔🤔🤔🤔🤔🤔🤔🤔🤔🤔🤔🤔

A MISTAKE, JUST LIKE YOUR NO INTERVIEWED APPOINTMENT TO PRINCIPAL.....

#whatisWALDOtoyou

BUT its not the first time #ElectioneeringViolations occur....OH NO

#staytuned to find out who ELSE helps clean up their 🤔🤔🤔🤔🤔

🤔🤔🤔🤔 #SingToME

#ROGUERATTLER #GotReceipts

#VoteThemOut #REIGNOVER #EXIT138
#sharylandisover



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EXHIBIT

6

**Dante Flores-Demarchi**

Oct 22, 2020 · 🌐

**Red's Voice**

Oct 21, 2020 · 🌐

Are you ready to find out what OTHER #loyalist cleans up
#EXIT138 🤖🤖🤖???

Its 🐸🐸🐸 MIMI and Keith's very own technology #guru
CULBERSON 🙌🙌🙌

Oh yeah!!!

Let take a stroll down #memorylane to visit PAST
ELECTIONEERING VIOLATIONS.....

So back in 2015 when #whereswaldo was running for #EXIT138,
she had the brightest idea to email an invite of her campaign to
school personnel emails. #TECHGURU Culberson rather quick on
the lookout for HER, emailed employees stating #waldo had done it
in ERROR AND WAS APOLOGETIC FOR HER CRIME. 🙄🙄🙄🙄🙄

WHEN her opponent, Cesar Aguilar, got wind of the ordeal in May,
he blasted it on his campaign page including the codes being
violated. #HesALawyer 🙄

Most IMPORTANTLY the question posted alongside asks, "if
protocols are being violated in the campaign trail, what makes you
think protocols will not be violated if she gets elected?"

#BURN

Given the amount of 🤖 uncovered this year and with continuing
daily 🤖 occurring WHY WOULD WE, the COMMUNITY, NOT
THINK other 🤖 WOULDN'T ALSO BE CLEANED UP FOR
THEM!!!!!!!!!!!!

Someone quick 🐸 #ALERT BOERNE AND FREDERICKSBURG
SCHOOL DISTRICTS BEFORE #WALDO #Slithers and
#INFILTRATES

#ERRORMYASS



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EXHIBIT**7**



Given the amount of 🦋 uncovered this year and with continuing daily 🦋 occurring WHY WOULD WE, the COMMUNITY, NOT THINK other 🦋 WOULDN'T ALSO BE CLEANED UP FOR THEM!!!!!!!!!!!!!!

Someone quick 🦋 #ALERT BOERNE AND FREDERICKSBURG SCHOOL DISTRICTS BEFORE #WALDO #Slithers and #INFILTRATES

#ERRORMYASS

#ROGUERATTLER
#GotReceipts

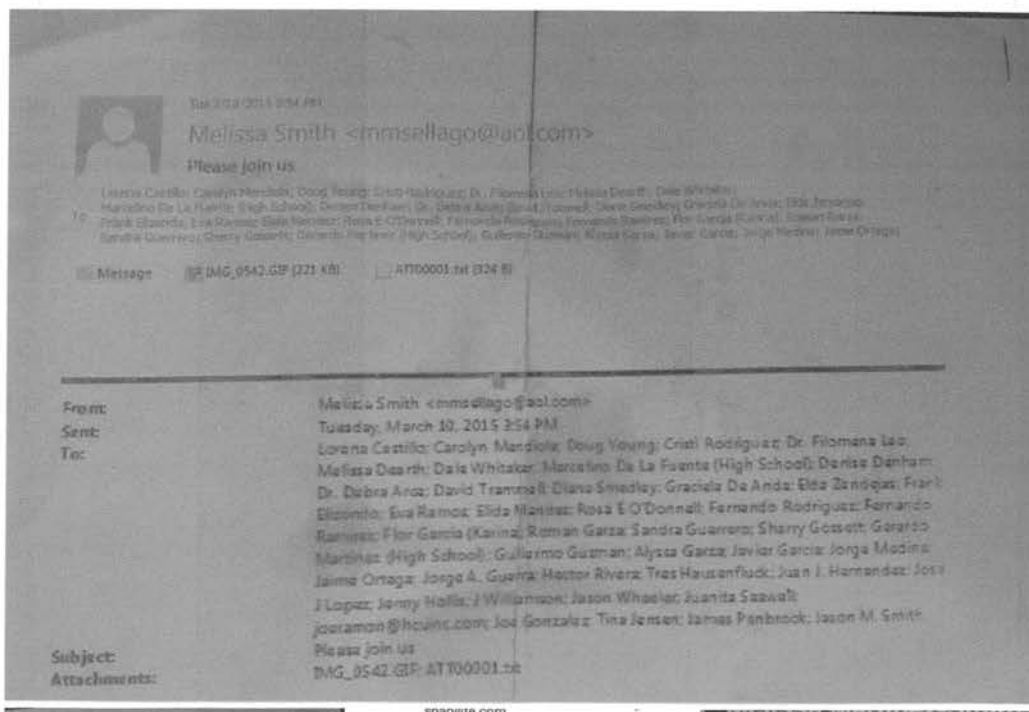
#whosthatjudge

#VoteThemOut
#REIGNOVER #EXIT138
#sharylendisover

<https://www.facebook.com/1598548007027612/photos/a.1607199019495844/1623130494569363/?type=3&anchorcomposer=false>

https://ballotpedia.org/Melissa_Martinez-Smith

<https://statutes.capitol.texas.gov/Docs/EL/htm/EL.255.htm>





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Ray

**Dante Flores-Demarchi**

Oct 24, 2020 · 🌐

**Red's Voice**

Oct 24, 2020 · 🌐

Beautiful weather for #EXIT138 TODAY, makes me want to curl up like the #ROGUERATTLER I AM to watch a 🎬🎥📺 TONIGHT.

Now since MIMI gets to PLAY ANCHOR🎬🎤👩, I'll PLAY MOVIE CRITIC & RECOMMEND A MUST SEE!!!!!!

BAD EDUCATION 👍👍 stars Hugh Jackman as FRANK TASSONE and Allison Janney as PAM GLUCKIN in a based on a TRUE STORY about New Jersey's ROSLYN Union Free School District, which was embroiled in a SCANDALOUS FINANCIAL EMBEZZLEMENT FOR YEARS.

Say WHAT 🤔😏😏

Turns out the school district was FULL OF NARCISSISTIC, SELF-SERVING, MORALLY CORRUPT, DOUBLE LIFE LIVING, SO CALLED PROFESSIONALS, who funneled TAX MONEY thru expense-account padding, vendor-bidding violations #DejaVu, check-record fabrications, even the creation of phony businesses.

On New York Magazine, Judy Winters, a COMMUNITY ACTIVIST, described TASSONE as Mr. Pecksniff, a character from Charles Dickens who exploited weaknesses of others, selfish and corrupt behind a display of BENEVOLENCE.

***Reminds me of MANY LOCAL PECKSNIFFS!!!!!!

Also, a veteran school board member is quoted as saying, " ROSLYN was a Peyton Place situation; where it was hard to keep your VALUES, IF YOU HAD ANY."

Indiewire's Ben Travers described it not only as a juicy true story but it also points out the BROKEN AMERICAN SCHOOL SYSTEM, the ABUSE TEACHERS ARE FORCED TO TAKE and the MADNESS IT CAN DRIVE THEM TOWARD.

GEEZ THAT MOVIE HITS HOME #EXIT138!!!!!!!!!!

Interesting side note, the ONLY CONSTANTS AT #SHARYLANDISD ARE THE BOARD MEMBERS, HMMMMMMMMM 🤔🤔🤔



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EXHIBIT**8**



FOR YEARS.

Say WHAT 🤔😂😂

Turns out the school district was FULL OF NARCISSISTIC, SELF-SERVING, MORALLY CORRUPT, DOUBLE LIFE LIVING, SO CALLED PROFESSIONALS, who funneled TAX MONEY thru expense-account padding, vendor-bidding violations #DejaVu, check-record fabrications, even the creation of phony businesses.

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GEEZ THAT MOVIE HITS HOME #EXIT138!!!!!!!

Interesting side note, the ONLY CONSTANTS AT #SHARYLANDISD ARE THE BOARD MEMBERS, HMMMMMMMM 🤔🤔🤔

#TRUTHHURTS #CRYMEARIVER #waaaaaa 🤔🤔🤔🤔🤔🤔🤔🤔

#whowasExit138INTERNALAUDITOR

#StayTuned

#ROGUERATTLER

#GotReceipts

#VoteThemOut #REIGNOVER #EXIT138

#sharylandisover

<https://www.hbo.com/movies/bad-education>

<https://www.rogerebert.com/reviews/bad-education-movie-review-2020>

<https://nymag.com/nymetro/urban/features/9908/>



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**Dante Flores-Demarchi**

Dec 28, 2020 · 🌐

...

**Red's Voice**

Dec 28, 2020 · 🌐

♪♪ Well this looks like a job for me, So everybody just follow me,
Cause we NEED A LITTLE CONTROVERSY, Cause it feels so empty
without me! ♫️ ♫️ ♫️ ♫️ ♫️

Oh my #EXIT138 seems like a 🤖 #hater deserved a whole post
and not just the usual back and forth banter in comments.

First who the F\$!# is WE?

WE is a pronoun referencing at least two if not more people, such
as a group. Know what else is considered a group an "enterprise".

Where else have I heard about enterprises????



Oh that's right RICO!!!!!! You know the Racketeer Influenced and
Corrupt Organizations Act.

U.S. v Turkette explained that enterprise reaches a group of
persons associated together for a common purpose of engaging in
a course of conduct and is proved by evidence of an ongoing
organization, formal/informal and by evidence that various
associates function as a continuing unit.

So pictured is an informal flow chart based on MY OPINION as to
the hierarchy at #SharylandISD and given the fact THAT CERTAIN
ACCOUNTS ARE NOW IDENTIFYING THEMSELVES AS
#LOYALISTS lets put them in order.

Huh, look at that, it resembles another chart 🤖 🤖 🤖 🤖 🤖 🤖 🤖
🤖 🤖

MOVING ON.....

According to the Dallas Morning News, in an article published on
12/9/16, a retired FBI agent Don Sutherland Jr. contacted Dave
Lieber to explain how his forensic accounting investigation in Texas
School Districts found four school districts with numerous



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EXHIBIT**10**

tabbles



a course of conduct and is proved by evidence of an ongoing organization, formal/informal and by evidence that various associates function as a continuing unit.

So pictured is an informal flow chart based on MY OPINION as to the hierarchy at #SharylandISD and given the fact THAT CERTAIN ACCOUNTS ARE NOW IDENTIFYING THEMSELVES AS #LOYALISTS lets put them in order.

Huh, look at that, it resembles another chart 😏😏😏😏😏😏😏😏😏😏

MOVING ON.....

According to the Dallas Morning News, in an article published on 12/9/16, a retired FBI agent Don Sutherland Jr. contacted Dave Lieber to explain how his forensic accounting investigation in Texas School Districts found four school districts with numerous programs which were fraudulent, boards were incompetent, Superintendents corrupt and are there to build resumes. He also gave examples of public school districts types of corruption.

But his response was given after, a previous article from 11/18/2016 regarding a Senate Hearing in which State Senator Lois Kolkhorst stated TASB "indoctrinates" its members into a kind of culture that is unhealthy for schoolchildren. Other activists, parents and bd. members shared her view.

If you tune INTO said hearing around hour/minute marker 5:30:00 the Regional Director for Libre Initiative in San Antonio, Gina Castaneda, described her concern of accountability and transparency for Harlandale District, she witnessed public input be intimidated and discouraged to voice concerns; bd members disregarded best practices and that they should follow the rules and be held accountable just like CHILDREN are held. She also explained the formation of audit committees comprised of COMMUNITY MEMBERS TO ENSURE PRACTICES, oh yes even having districts submit to FORENSIC AUDITS WHICH HARLANDALE HADN'T DONE IN OVER TEN YEARS.

I WONDER IF THE 🐢🐢 EVEN KNOW WHAT ONE IS!!!!!!!!!!

Lastly her comment of "for democracy to function there needs to be ACTIVE CITIZEN PARTICIPATION.

Soooooooo.....THIS IS ME PARTICIPATING 😏😏😏😏😏😏😏😏😏😏

#ROGUERATTLER #GotReceipts #keepwrecking #Exit138



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HAVING DISASTROUSLY TO PERFORMED WITHIN
HARLANDALE HADN'T DONE IN OVER TEN YEARS.

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Soooooooo.....THIS IS ME PARTICIPATING😄😄😄😄😄😄😄😄

#ROGUERATTLER #GotReceipts #keepwrecking #Exit138

P.S. Next TIME there's a loyalist signing off, DON'T FORGET TO USE Y'ALLS TRADEMARK SIGNATURE 🇺🇸 #LOYALIST

#WhosNext #papershredder #paparazzi #sharymom
#cookiecutter

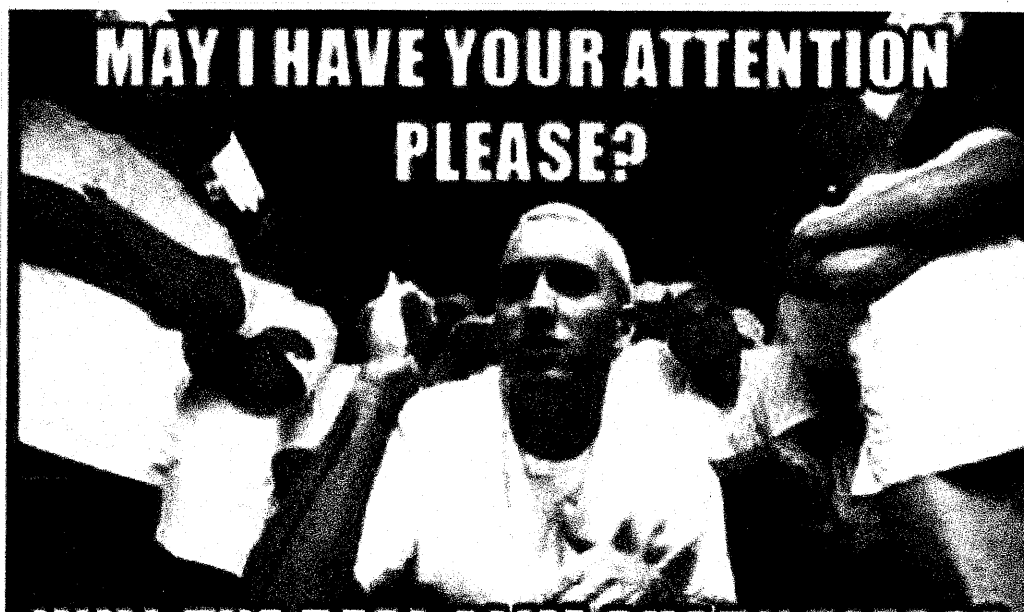
<https://en.m.wikipedia.org/wiki/Racketeering>

<https://www.casebriefs.com/blog/law/criminal-law/criminal-law-keyed-to-bonnie/racketeering/united-states-v-turkette-2/>

<https://www.dallasnews.com/news/watchdog/2016/12/09/dishonor-roll-former-fbi-agent-turned-texas-public-school-investigator-sees-corruption-up-close/>

<https://www.dallasnews.com/news/watchdog/2016/11/18/state-lawmaker-says-texas-school-board-members-get-indoctrination-into-groupthink-culture/>

http://tlcsenate.granicus.com/MediaPlayer.php?clip_id=11250

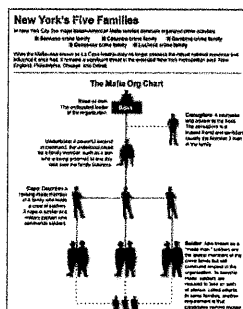
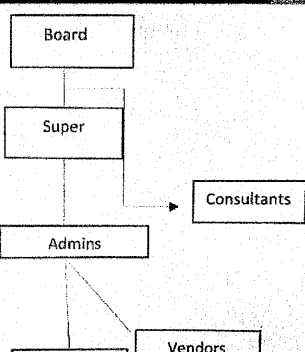




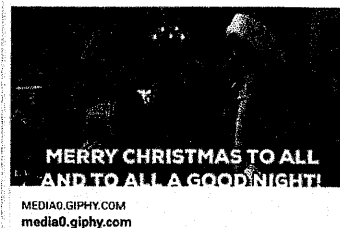
<https://www.dallasnews.com/news/watchdog/2016/12/09/dishonor-roll-former-fbi-agent-turned-texas-public-school-investigator-sees-corruption-up-close/>

<https://www.dallasnews.com/news/watchdog/2016/11/18/state-lawmaker-says-texas-school-board-members-get-indoctrination-into-groupthink-culture/>

http://tlcsenate.granicus.com/MediaPlayer.php?clip_id=11250



<https://www.courtlistener.com/opinion/3088427/sharyland-independent-school-district-v-romelia-fa/>



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Dante Flores-Demarchi

Dec 25, 2020 · 🌐

T'was the night before Christmas 🎅🏻🎄📺 and all thru the house not



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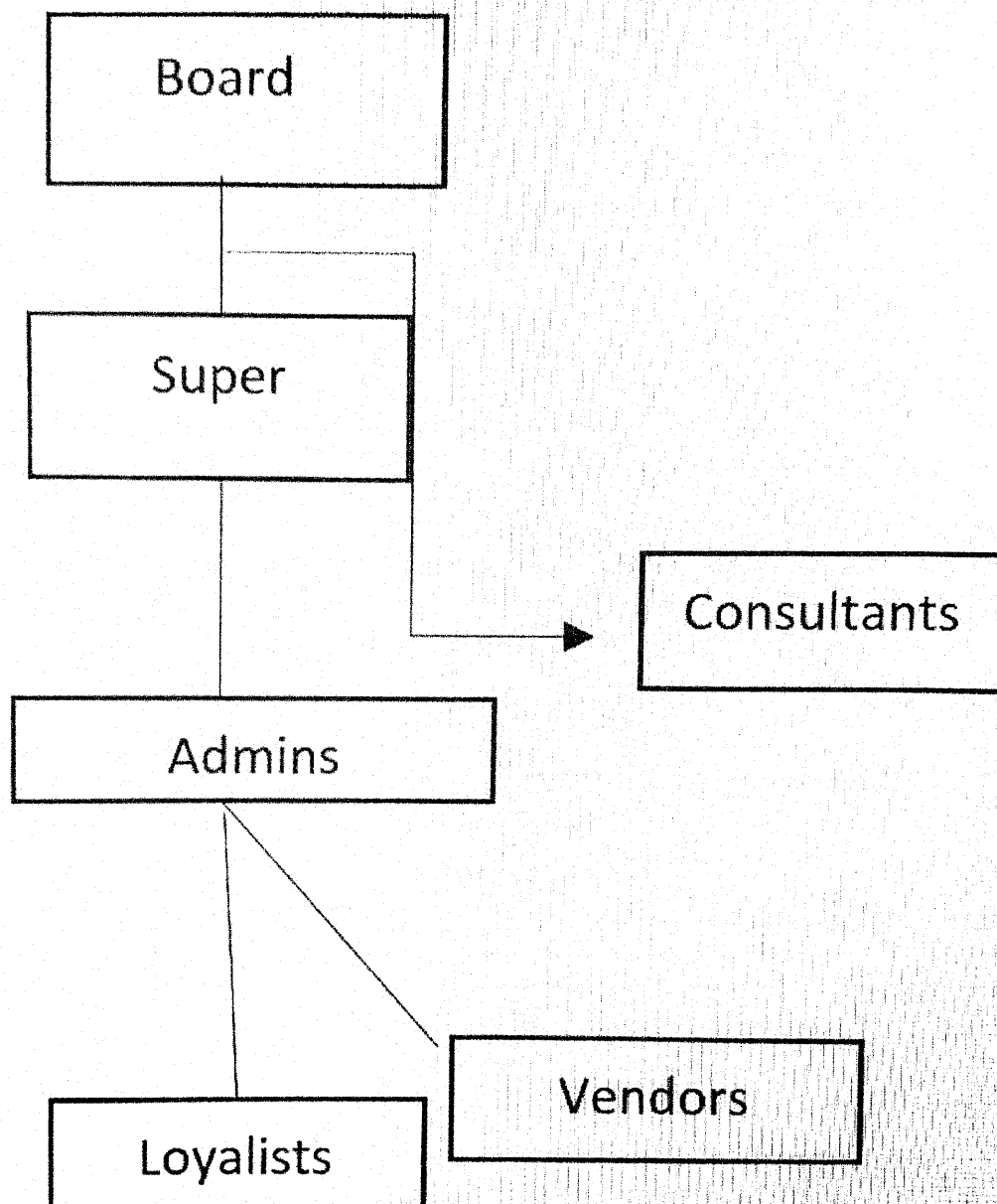


WILL THE REAL SLIM SHADY PLEASE STAND UP?

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New York's Five Families

In New York City, five major Italian-American Mafia families dominate organized crime activities:

Red's Voice's Post

Loyalists

Vendors

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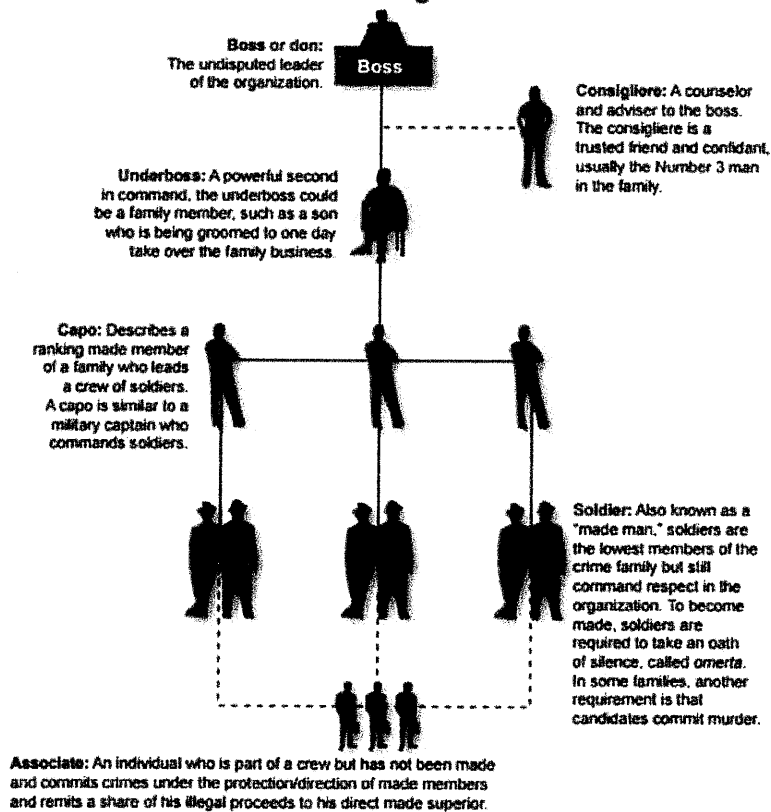
New York's Five Families

In New York City, five major Italian-American Mafia families dominate organized crime activities:

- Bonnano crime family ■ Columbo crime family ■ Gambino crime family
- Genovese crime family ■ Luchese crime family

While the Mafia—also known as La Cosa Nostra—may no longer possess the robust national presence and influence it once had, it remains a significant threat in the extended New York metropolitan area, New England, Philadelphia, Chicago, and Detroit.

The Mafia Org Chart



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Court of Appeals/2013/13-12-00023-CV.html

<https://www.courtlistener.com/opinion/3088427/sharyland-independent-school-district-v->



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Ray

**Dante Flores-Demarchi**

Jan 11 · 🌐

**Red's Voice**

Jan 11 · 🌐

It has been one f\$!xing crazy start to the year 2021. While I have no problem expressing exactly how I feel and think about the assault on #Democracy, witnessing it on LIVE 📺 left me shell shocked 😱, frustratingly upset 😡, bewildered 😵, impatient 😡, disappointed 😞, saddened 😞 and REELING 🌀 as to how people CAN NOT SEE THE 🐺👤 FOR WHAT IT IS.

Then, out of no where, a message was sent that brought me back from reflecting on con artist politicians, self serving WHO THE F%÷x CARES LET IT BURN ACTS at a NATIONAL LEVEL TO LOCAL MATTERS THAT ALSO DESERVE ATTENTION GIVEN the fact that actions ARE misconstrued by 👤 #loyalists to hide THEIR REAL INTENT AND END UP MISLEADING PEOPLE HERE at #EXIT138.

Unfortunately, I have a lot to state and will not be able to cover ALL I WOULD LIKE TO ADDRESS FROM LAST WEEK'S Business Committee Meeting FOR #SharylandISD IN THIS POST.

Let's BEGIN WITH,

The Texas Association of School Board issued a news release for ALL TEXAS SCHOOL DISTRICTS. Advising on the appropriate measures to take since FEDERAL FUNDING FOR EMPLOYEES AFFECTED BY #RONA ENDED ON DEC. 31, 2020.

In it, Karen Dooley, senior HR consultant, writes that passing a board resolution to continue some or ALL benefits covered under the expired FFRCA provides a simple solution to continue leave options for their EMPLOYEES AFFECTED BY PANDEMIC. SUCH A RESOLUTION should have PUBLIC PURPOSE WHICH MAY BE TO PROTECT STUDENTS & STAFF, MAINTAIN MORALE OR REDUCE TURNOVER. ALSO EXPLAINED IS THAT IF FFRCA IS EXTENDED IN ITS FULL BENEFITS, it could provide more benefits than DISTRICT DESIRES GIVEN THAT THRU THE ADOPTED RESOLUTION THE DISTRICT WILL BE USING ITS 💰💰💰💰💰💰

💰.

FOR EXAMPLE A DISTRICT MIGHT NOT WANT TO EXTEND PAID LEAVE IF THE EMPLOYEES CHILD WHOSE PLACE OF CARE/ SCHOOL IS UNAVAILABLE AS WAS PROVIDED BY EMERGENCY FAMILY MEDICAL LEAVE EXPANSION ACT (FMLA).



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EXHIBIT**11**



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TURNOVER. ALSO EXPLAINED IS THAT IF FFRCA IS EXTENDED IN ITS FULL BENEFITS, it could provide more benefits than DISTRICT DESIRES GIVEN THAT THRU THE ADOPTED RESOLUTION THE DISTRICT WILL BE USING ITS 💰💰💰💰💰💰💰.

FOR EXAMPLE A DISTRICT MIGHT NOT WANT TO EXTEND PAID LEAVE IF THE EMPLOYEES CHILD WHOSE PLACE OF CARE/ SCHOOL IS UNAVAILABLE AS WAS PROVIDED BY EMERGENCY FAMILY MEDICAL LEAVE EXPANSION ACT (EMFLEA) part of FFRCA.

On January 7th, #SharylandISD #showanchor MIMI AND HR #MINION PROPOSED SAID RECOMMENDED TASB RESOLUTION TO BOARD in a special called meeting. THE RESOLUTION CALLED FOR additional paid leave for employees instructed not to report due to Covid 19 and not able to work remotely; and for EMPLOYEES WHO ARE SICK AS A RESULT OF COVID 19, HAVE EXHAUSTED ALL AVAILABLE LEAVE AND UNABLE TO WORK REMOTELY. THE RESOLUTION WAS VOTED ON THRU ITS FORMAL PROCESS AND APPROVED. 🐶🐶 #Stuart BEING THE FIRST TO MOTION FOR APPROVING RESOLUTION

IMAGINE HOW 🤔🤔🤔🤔🤔 IT WOULD HAVE LOOKED IF THE DISTRICT DID NOT PROVIDE THIS RESOLUTION TO THEIR ILL EMPLOYEES. Would they have continued to teach from the hospital or ill like THIRD GRADE TEACHER Philamena Belone from ALBUQUERQUE, NM WHO TAUGHT WITH AN OXYGEN MASK UNTIL SHE COULDN'T BREATHE AND PASSED. Or not be PAID if they happen to be like El Paso TEACHER ZELENE BLANCAS who spent 2 months sick before also passing.

But you know what is 🤔🤔🤔, is 🐶🐶 #Stuart starting HIS RE ELECTION CAMPAIGN ON HIS PAGE & ALL 🐶 #POLITQUERA want to use A RECOMMENDED TASB RESOLUTION AS HIS OWN BENEVOLENT ACT.

In true con artist, SELF SERVING, AFTER HE HIMSELF IN THE DECEMBER BD MEETING REFERRED TO MY OPINION AS MISINFORMED, 🤔 #loyalist #POLITQUERA (who else pays you?) TAGGED HERSELF WITH #STUARTS WIFEY, then MESSAGED ME A SS TO TRY TO SWAY MY OPINION OF HIS #Pecksniff 🍷 NOT REALIZING I DO SEE THRU THE 🐶🤔.

TAKE YOUR DESPERATE MOVE SOMEWHERE ELSE!!!!!!!!!!!!!!!!!!!!!!
#desperados



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REALIZING I DO SEE THRU THE 🐕💩.

TAKE YOUR DESPERATE MOVE SOMEWHERE ELSE!!!!!!!!!!!!!!!!!!!!!!
#desperados

And while TEACHERS are admiring other DISTRICTS who have approved OTHER measures like delaying or extra pay, THEIR LACK OF SELF ADVOCATING or for others, like students, IN A DISTRICT THAT CONTINUES TO UNDER APPRECIATE THEM IS MAKING ME THINK our EDUCATORS might be suffering from
#stockholmsyndrome although I do #suspect some might have 2 screws and a nut loose.

IN A NOW DELETED POST #yougottobequickerthanthat FROM OCTOBER, #RATTLER STAFF IS MOCKING HOW THEY ARE VALUED. I GUESS 🍔🍔🍔🍔 from 🐞 #loyalist #vendor and #leface "breaking" laws by distributing jean passes like money for #strippers makes up for it. What other crimes have you committed??? #HENCHMEN #twitterparody

Don't WORRY #leface based on YOUR propaganda video for the start of the school year, YOU LOOK GOOD IN ORANGE.
#orangeisthenewblack

#staytuned for more!!!!!!

#roguerattler #GotReceipts #keepwrecking #EXIT138

#Reignover 🐞🐞 #stuart

#whosnext #cookiecutter #papershredder #sharymom

<https://www.tasb.org/services/hr-services/hrx/hr-laws/federal-leave-is-ending,-what-s-next.aspx>

<https://youtu.be/RrwHPEX58WI>

<https://www.cnn.com/2020/12/17/us/navajo-nation-teacher-covid-19-trnd/index.html>

<https://www.cnn.com/2020/12/31/us/el-paso-teacher-kindness-covid-19-trnd/index.html>

<https://m.facebook.com/story.php?storyfbid=10158718044980560&id=52422955559>

<https://www.healthline.com/health/mental-health/stockholm-syndrome#definition>





<https://youtu.be/RrwHPEX58WI>

<https://www.cnn.com/2020/12/17/us/navajo-nation-teacher-covid-19-trnd/index.html>

<https://www.cnn.com/2020/12/31/us/el-paso-teacher-kindness-covid-19-trnd/index.html>

<https://m.facebook.com/story.php?storyfbid=10158718044980560&id=52422955559>

<https://www.healthline.com/health/mental-health/stockholm-syndrome#definition>

<https://t.co/Rkaln8pc9m> <https://twitter.com/SISDnews/status/1294694528167936001?s=20>

← Pepe Garcia for Sharyland ISD | Fa...



Pepe Garcia for Sharyland ISD

January 8 at 11:06 AM · 🌐

10:27

LTE



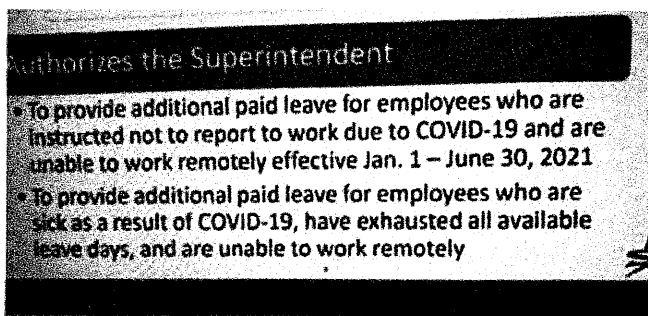
Alexia's Post



Alexia Anne Solis is with Lety Garcia.

38m · 🌐

A special thank you to Jose Pepe Garcia, for listening to the Sharyland ISD teachers concerns and passing a resolution providing additional paid leave for those that are instructed not to report to work due to Covid-19!



👍 Like

💬 Comment

➦ Share

👤 You, Jennifer Garcia and 5 others

Boosting your post. ... Yesterday at 10:10 PM



Posts from Red's Voice reached 85 people and had 18 engagements th... Fri at 5:24 PM



Alexia Anne Solis sent a message to Red's Voice: "Teachers and staff fina... Fri at 11:16 AM



Share updates about Red's Voice by creating a new post, photo or video.



27% 9:01 AM

← Alexia Anne Solis



Alexia Anne Solis is with Lety Garcia. January 8 at 9:47 AM · 🌐

A special thank you to Jose Pepe Garcia, for listening to the Sharyland ISD teachers concerns and passing a resolution providing additional paid leave for those that are instructed not to report to work due to Covid-19!

← Alexia Anne Solis

A special thank you to Jose Pepe Garcia, for listening to the Sharyland ISD teachers concerns and passing a resolution providing additional paid leave for those that are instructed not to report to work due to Covid-19!

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Dante Flores-Demarchi

Jan 30 · 🌐

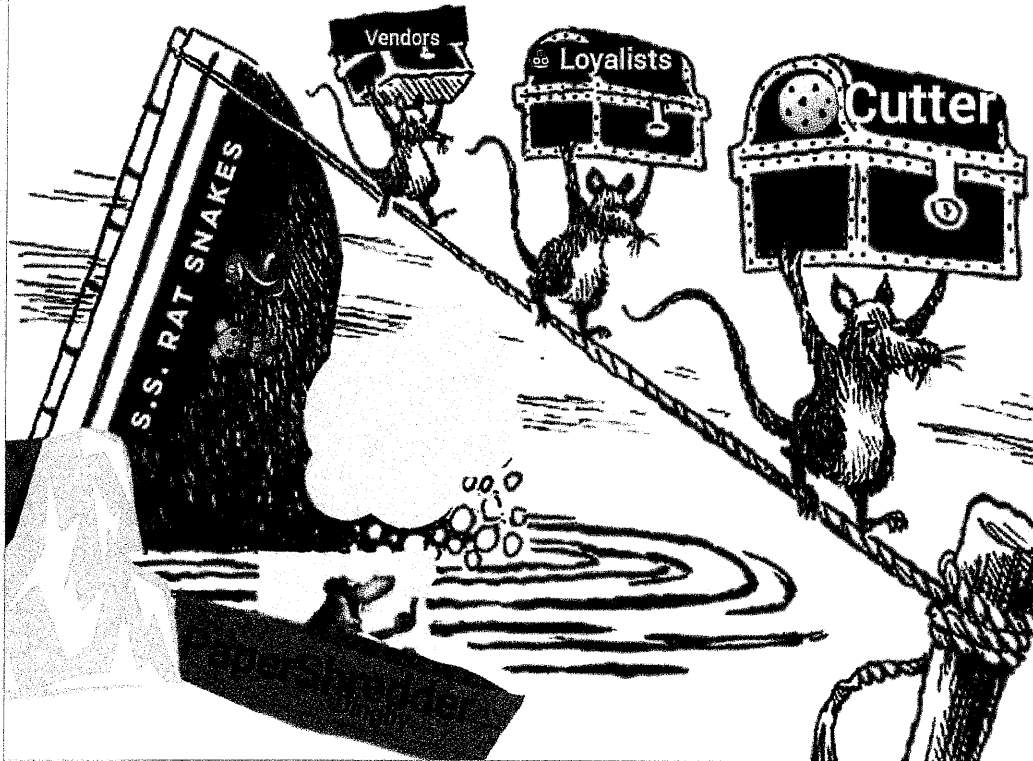


Red's Voice

Jan 29 · 🌐

LET THE #shipwreck COMMENCE #ssratsnake

#SharylandISD #BoardEl... See More



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Juan F. Zuniga II ▶ Dante Flores-Demarchi

Jan 25 · 👥



Happy Belated Birthday! Hope you had a great one!

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12

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**Dante Flores-Demarchi**

Jan 30 · 🌐

**Red's Voice**

Jan 30 · 🌐

I've come to bury (figuratively) the

🐱🐱s, 🐱 #loyalists, 🐱🐱 #minions NOT TO PRAISE THEM.

#EXIT138 #SharylandISD COMMUNITY it is time to RISE UP AND
HEAR THE NEED OF REAL, COMPETENT LEADERSHIP!!!!!!!!!!!!!!
#BOARDELECTIONS2021

#WALDO is NO longer sitting her 🐱 on the #BOARD
#youcantsitwithus BUT IS PURSUING TO INSTALL HER #LAPDOG
🐱🐱 #papershredder in HER PLACE, ALONG SIDE 🐱🐱 #Stuart.

IS THIS #papershredder stepping stone for the NEXT CITY OF
MISSION COUNCIL SEAT in three years?

Does the #SharylandISD COMMUNITY need ANYMORE 🐱🐱
CRONIES #papershredder #cookiecutter??????

The answer is NOOOOOOOOO!!!!!!!!!!

#SouthSide DO NOT LET THEM DISSUADE YOU ANYMORE FROM
RUNNING, Now is YOUR TIME!!!!!!!!!! #ordontcomplain

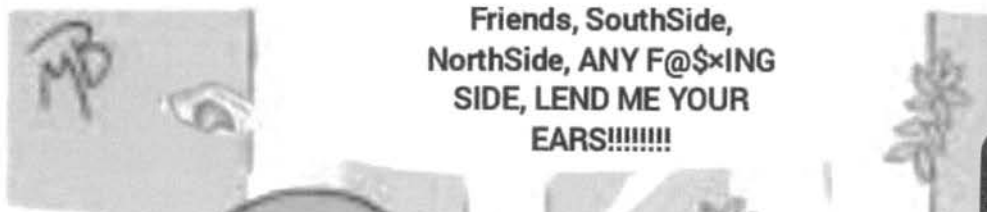
Packets are available already CALL 🐱 #loyalist School Board
SECRETARY FOR YOURS. #DueDate is FEBRUARY 12TH.

#ImNOTwithmidget 🐱🐱🐱🐱🐱🐱🐱🐱🐱🐱🐱🐱🐱🐱🐱🐱🐱🐱
🐱

#RogueRattler #GotReceipts #keepwrecking #EXIT138

#BoardElections2021

#whosnext 🐱🐱 #stuart #papershredder #cookiecutter



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13



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Dante Flores-Demarchi

Feb 10 · 🌐



Red's Voice

Feb 4 · 🌐

The 🍷🍷🍷🍷🍷 show is soooooooooo GOOD, I've run out of 🍷
 🍷🍷🍷🍷!!!!!!



#CountDown #TimeToReZONEBACK

#StayTuned for ☕☕☕☕ #SharylandISD #boardelections2021

#RogueRattler #STAKEHOLDER #GotReceipts #keepwrecking
 #Exit138

#WhosNext 🐉🐉 #stuart #papershredder #cookiecutter



3 Comments

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Dante Flores-Demarchi

Feb 2 · 🌐



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Dante Flores-Demarchi

Feb 12 · 🌐



Red's Voice

Feb 12 · 🌐



COMPLACENCY IS THE ONLY F@\$\$%ING OPTION!!!!!!



#marieantoinette 🍰💰💰💰💰💰 #bond2021

#ROGUERATTLER #stakeholder #keepwrecking #EXIT138

<https://youtu.be/QczOcpYBHTk>https://ballotpedia.org/Melissa_Martinez-Smith

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Dante Flores-Demarchi

Apr 7 · 🌐



Red's Voice

Apr 1 · 🌐

Waiting for #SharylandISD to upload the MARCH 2021 Regular Board Meeting IN ITS ENTIRETY 🤔🤔🤔🤔🤔🤔🤔🤔

AnyONE SCREEN RECORD??????

🗣️ #showdebacle #fordvschevy #wheresthetransperacy

#RogueRATTLER #StakeHolder #keepwrecking #EXIT138
#GotReceipts

Check out the PREVIEW
BOARD WORKSHOP #Minute45

<https://youtu.be/ahTq1cwRlcQ>

#staytuned for MORE & forgive the DELAY BUT I've been one
#busybee 🤔🤔🤔 #hittingthembooks
DON'T THINK I FORGOT ABOUT Y'ALL!!!!!!!



16 Three (3) Full Size Pick-up 1
22-Mar-21

Vehicle 1 1 Ton Gas Fuel	Vehicle 2 1 Ton Dually Diesel	Vehicle 3 1 Ton Diesel
938.56	\$ 45,590.00	\$ 44,529.8
170.00	\$ 44,775.00	\$ 43,110.0
887.47	\$ 46,595.80	\$ 45,353.4



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16



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BEING SPEWED AT THIS MOMENT.

BACK TO MARCH 29TH's MEETING.....

Ladies and Gentlemen of #Exit138 #SharylandISD has its own
OFFICIAL Colton Underwood type #Bachelorette STALKER 🤔🤔

🤔🤔. Another commentator was no other than
#personanongrata EX, I REPEAT, EX BOARD MEMBER JULIO
CERDA, who referred to his five minutes of extra fame like that of
going to an ex girlfriends parents FOR A FAVOR. WTF!!!!!! Does
he not realize the BACHELORETTE, SHARYLAND ISD
COMMUNITY, has GIVEN OUR 🐾 TO ANOTHER CONTESTANT.
HIS debating skills are irrelevant at this point and WANTING to
engage #loneranger OVER HIS DECISION TO VOTE NO FOR WHAT
I BELIEVE IS AN ULTIMATELY FAILED BOND ANYWAYS, is #sad
🤔. Does he not RECALL THE BOARD DOES NOT ENGAGE
PUBLIC COMMENTARY, six years of ignoring IT you think he'd
REMEMBER.

More thoughts TO COME on the BOND ISSUE & THEIR 🤔🤔
#geriatriccheerleader PAC LATER!!!!!! 🤔🤔🤔🤔

Now what I WANT to focus my attention is on the pink tutu
wearing, ELEPHANT pirouetting circles around us, of which I CAN
NOT & WILL NOT IGNORE.

Also occurring THAT day was the vote on PIONEERS NEED FOR
TRUCKS, #FORDS TO BE PRECISE. No other than 🐾🐾

#marieantoinettes Ford of Boerne was awarded a bid, 123K \$,
#cuttingchecks for 3 TRUCKS. From their public disclosure of past
vehicle buys I can assume those NEW EXPEDITIONS RECENTLY
PURCHASED CAME FROM THERE AS WELL. At hour minute
marker 1:06:00 THE INTRODUCTION OF DISCUSSION AND
CONSIDERATION TO APPROVE RFP 2021-16 FULL SIZE PICKUP
TRUCKS 🐾🐾 #magicrick motions for its approval but a
discussion begins

at 1:08:00 which starts a whole debacle but 🐾🐾 #stuart seemed
to have wanted to STOP the discussion with his sneaky motion to
second at 1:08:36!!!!!! DID Y'ALL CATCH THAT 🤔🤔🤔🤔🤔🤔

ANYWAYS WHILE EVERYONE IS DANCING AROUND THE ISSUE
OF #FORDVSCHEVY with their 🐾🐾 criteria graphs, WHAT I FIND
PECULIAR IS THE FACT THAT NO ONE IN #RGV WANTS TO BID
ON A LOCAL SCHOOL DISTRICTS NEED?????? HOW THE F@\$%
is that even possible?!?!?! The VALLEY AUTO DEALERS GROUP
WHICH IS COMPRISED OF AUTO DEALERSHIPS FROM RIO
GRANDE CITY TO BROWNSVILLE & #TINBUCKTOO has a total of



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ANYWAYS WHILE EVERYONE IS DANCING AROUND THE ISSUE OF #FORDVSCHEVY with their 🐮🐷 criteria graphs, WHAT I FIND PECULIAR IS THE FACT THAT NO ONE IN #RGV WANTS TO BID ON A LOCAL SCHOOL DISTRICTS NEED?????? HOW THE F@\$% is that even possible?!?!?! The VALLEY AUTO DEALERS GROUP WHICH IS COMPRISED OF AUTO DEALERSHIPS FROM RIO GRANDE CITY TO BROWNSVILLE & #TINBUCKTOO has a total of 50+ dealership locations. Do NONE OF THEM READ THE MONITOR!!!!!!!!!! So only dealerships 250 plus miles away are INTERESTED IN READING THE MONITOR AND BIDDING AT #SharylandISD. GOT IT 😞😞😞😞

WHAT HAPPENED TO OUR RELATIONSHIP WITH SPIKES AND BOGGUS???AT ONE TIME THEY SPONSORED THE DISTRICT. CAN ANYONE ANSWER ME THAT?!?!?!?!? #Illwait 😞😞😞

How weird especially since the Houston Chronicle, Small Business Section reported on the benefits of public education and business partnerships beneficial advantages for each party. Schools benefit by receiving tangible and intangible assistance from the private sector. As a #StakeHolder I highly encourage for local businesses of ALL AVENUES to engage with #SharylandISD AS IN THE PAST, soooo maybe next time those 123K 💰 can actually BENEFIT OUR LOCAL COMMUNITY!!!!!!!!!!

One more THING. I WOULD LIKE TO ADDRESS 🐷🐷 #MAGICRICKS LAST COMMENT, in which he acknowledges the STUDENTS WHO SPOKE, exclaiming, " who are coming out its hard to get up there....and when you have students passionate about the legacy they're leaving behind....CONGRATULATE THEM ON FOR AT LEAST HAVING THE GUMPTION AND CARE OF HEART TO SPEAK ABOUT THE BOND.....

IF ONLY THOSE CONGRATULATIONS WERE ALSO GIVEN TO THOSE WHO SPOKE UP DURING THE HAZING AND ALL THE OTHERS WHO HAD PREVIOUSLY TRIED TO BRING ATTENTION TO SERIOUS ALLEGATIONS COULD HAVE BEEN GIVEN THE SAME RESPECT AS THOSE NOW BEING USED TO PUSH A FINANCIAL POLITICAL AGENDA.

#ROGUERATTLER #STAKEHOLDER #GotReceipts #keepwrecking #EXIT138

#STAYTUNED FOR MORE

<https://www.progresstimes.net/2021/04/02/sharyland-community-rallies-for-bond-support/>





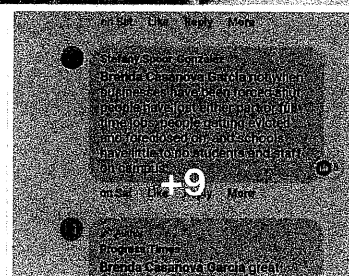
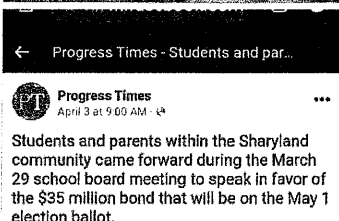
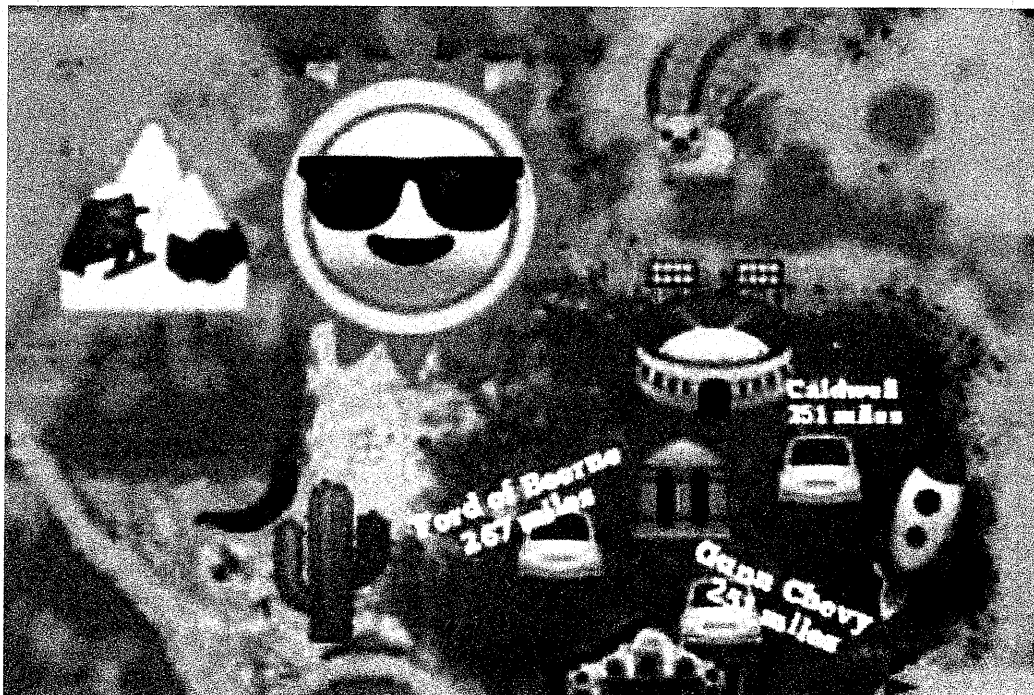
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Ray



#STAYTUNED FOR MORE

<https://www.progresstimes.net/2021/04/02/sharyland-community-rallies-for-bond-support/><https://myrgv.com/featured/2021/04/05/sharyland-bond-issue-draws-some-support/><https://youtu.be/kPTLI2pLv1E><https://www.facebook.com/ProgressTimes/posts/3452248964881650/><https://www.cosmopolitan.com/entertainment/tv/a33996897/cassie-randolph-colton-underwood-stalked-tracking-device-car/><https://youtu.be/lbR1qiPsi9I><https://www.valleyautodealers.org/vada-contact-us><https://smallbusiness.chron.com/benefits-public-education-business-partnerships-59407.html>

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**Dante Flores-Demarchi**

Apr 7 · 🌐

cant believe that Melissa Smith (board member) is financially benefitting from the schools business practices!!! oh wait yes i can

**Red's Voice**

Apr 7 · 🌐

Well WELL finally got some down time to put some words OUT into the 🌐. Lots occurring right NOW its hard to keep my focus on one single matter BUT I will do my best and TRY. 😊😊😊😊😊😊😊😊😊😊

Local media has been reporting on last weeks BOARD MEETING in which public comments involved the topic of THE BOND. Rattler Student Council commented on the dire NEED OF IT DUE TO MOLD. Excusez MOI!!!!!! Qué INTERESANTE, WHERE was this MOLD 6 months ago?!?!?! WHO LED THESE CHILDREN TO BELIEVE THERE IS MOLD AND ENCOURAGED THIS VERY SERIOUS, CONCERNING STATEMENT, EVEN INVOLVING THE HEALTH OF PERSONS SUPPOSEDLY ON MEDICATION. ONLY TO BE DEBUNKED AT LAST NIGHT'S TOWN HALL MEETING WHEN THE #LONERANGER ASKED #SHOWANCHOR MIMI AND #MARKYELCARNAL WHETHER OR NOT THE MOLD WAS EVEN ACCURATE INFORMATION #minute28. ONLY TO BE TOLD THAT NO THERE IS NO MOLD; COULD YOU SAY IT LOUDER. SO MUCH FOR PROGRESS TIMES REPORTING BEING FACTUALLY BASED. ON THEIR BACK FORTH COMMENTING WITH READERS ON FB CLAIMING IT DOESN'T HAVE LUXURY OF MAKING THINGS UP huh😞 SEEMS TO BE IT DOESN'T HAVE THE LUXURY TO VERIFY INFORMATION PRIOR TO ITS PRINTING EITHER; Nor the MONITOR. Maybe a simple question to MIMI would have sufficed, like, "care to COMMENT on THAT MOLD MATTER?" OR MAYBE THEY WERE ALSO FED A PROPAGANDA LIE. WHO KNOWS MATTER OF FACT I FIND IT DIFFICULT TO BELIEVE ANYTHING BEING SPEWED AT THIS MOMENT.

BACK TO MARCH 29TH's MEETING.....

Ladies and Gentlemen of #Exit138 #SharylandISD has its own OFFICIAL Colton Underwood type #Bachelorette STALKER😂😂

😂😂. Another commentator was no other than #personanongrata EX, I REPEAT, EX BOARD MEMBER JULIO CERDA, who referred to his five minutes of extra fame like that of going to an ex girlfriends parents FOR A FAVOR. WTF!!!!!! Does he not realize the BACHELORETTE, SHARYLAND ISD



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Dante Flores-Demarchi

May 1 · 🌐



Red's Voice

Apr 30 · 🌐

Tomorrow is ElectionDay for #Exit138, as I scroll thru FB, local political ads from all across #RGV pop up mentioning a law firm who has and continues donating to local politicians, including 🐶

🐶 #Stuart.

In The Monitor's article from 4/18/2021, financial disclosures from candidates in the run for school board yielded the FOLLOWING THOUGHTS.....

EX #CRONIE & #backupsinger for the 🐶s, who's now embarking on her first #solo album with a freshly AUTO-TUNED #VOICE, #cookiecutter seems to have gone into debt to fund her "NEW VOICE" CAMPAIGN.

🐶 #marieantoinettes LAPDOG #papershredder basically got any candidates dream, the magical powers of persuasion must have been at play for the gift of no opposition in the race for #SharylandISD SCHOOL BOARD PLACE 3.

It's not like there hasn't been public disclosures of these magical powers at PLAY. NOT TOO LONG AGO A COMMUNITY MEMBER DETAILED A PHONE CALL SHE RECEIVED WHEN SHE HERSELF HAD APPLIED FOR SCHOOL BOARD CANDIDACY. THE MEMBER INFORMED HER THEY ALREADY HAD THE NEXT PERSON LINED UP FOR THE JOB. RESULTING IN HER WITHDRAWING AND BEING TURNED OFF FROM RUNNING. GUESS THAT'S WHAT #cookiecutter IS REFERENCING IN HER WEBPAGE'S #shotsfired ABOUT TAB.

🐶 #stuart on the other hand seems to have kick started his campaign with a very nice donation from none other than that talked ABOUT law firm, LINEBARGER GOGGAN BLAIR & SAMPSON FOR A 🐶 \$1,500. Interesting LINEBARGER IS THE LAW FIRM CONTRACTED TO SUE CONSTITUENTS FOR UNPAID TAXES. A simple #Google search returns many links with not too favorable content about the law firm's practices.

Lets see in 2015 CNNMONEY INVESTIGATION the debt collector



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🐼🐼 #stuart on the other hand seems to have kick started his campaign with a very nice donation from none other than that talked ABOUT law firm, LINEBARGER GOGGAN BLAIR & SAMPSON FOR A 😎\$1,500. Interesting LINEBARGER IS THE LAW FIRM CONTRACTED TO SUE CONSTITUENTS FOR UNPAID TAXES. A simple #Google search returns many links with not too favorable content about the law firm's practices.

Lets see in 2015 a CNNMONEY INVESTIGATION, the debt collector that runs Texas, concluded LINEBARGER wine and dined, spent millions on campaigns even put elected officials on their payroll in an attempt to persuade ANY ELECTED POLITICIAN INTO BATTLING FOR THEIR (LINEBARGERS) INTERESTS. From 2000 to time of report, the law firm and its employees spent more than 4.5 million in campaign donations, information gathered from a TPJ analysis of state findings. That amount does not include local campaign donation like those of 🐼🐼 #Stuart because those records are not reported at a state level. The article continues by stating some of this money was doled out as LINEBARGER lobbied for favorable laws which ultimately benefitted the firm but at a local level, elected officials who have received donations from LINEBARGER are the very same people who choose whether to hire the law firm. An example PRECISELY FROM HIDALGO COUNTY EXPLAINS LINEBARGER GAVE MORE THAN 20K TO COUNTY COMMISSIONERS CAMPAIGNS SINCE 2012. THESE COMMISSIONERS UNANIMOUSLY VOTED TO HIRE LINEBARGER TO COLLECT UNPAID TAXES. While LINEBARGER claims to be a "good corporate citizen" by an active community involvement, the firm also spends alot of 💰💰💰💰💰 hiring consultants to help them gain access to officials. ALL very much LEGAL but some of those hired have been accused of crossing lines. At the time of printing 2 people hired had been involved in separate bribery scandals taking place in Dallas and Houston. Other controversial methods are hiring state lawmakers taking the firm to "a new level", said LOYOLA LAW SCHOOL PROFESSOR JESSICA LEVINSON further saying, "an overly cozy relationship where money calls the tune".

So of COURSE inquisitive minds are going to probe FINANCE REPORTS OF THE SHARYLAND BOND COMMITTEE to •• WHO'S funding it. FROM THEIR DISCLOSURES WE CAN DEDUCE WHO'S THE HEAD 🤔🤔 #geriatriccheerleader/treasurer with her 100 dllr donation.

OTHER contributors were none other then 🐼🐼s #mariantoinette, #magicRick, #juicygossip, #MrClean





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So of COURSE inquisitive minds are going to probe FINANCE REPORTS OF THE SHARYLAND BOND COMMITTEE to WHO'S funding it. FROM THEIR DISCLOSURES WE CAN DEDUCE WHO'S THE HEAD #geriatriccheerleader/treasurer with her 100 dllr donation.

OTHER contributors were none other then #mariantoinette, #magicRick, #juicygossip, #MrClean #personanongrata & #SharylandISD #lawfirm to name a FEW #whatsinitforyall. But puzzling is the consultation fee paid to Paul Vazaldua Jr., AIN'T he the one who was vice president of the ems company that recently filed for bankruptcy and whose CEO, KENNETH PONCE WAS FEDERALLY INDICTED FOR BANKRUPTCY FRAUD!!!! Is that really the best PERSON for CONSULTING?!?!?!



This week also BROUGHT letters to the editor on The Monitor glad to KNOW I'M NOT THE ONLY ONE WHO THINKS THE BOND IS NOT A GOOD !!!!!

#VOTENO

#STAYTUNED for more!!!!

#ROGUERATTLER #STAKEHOLDER #GotReceipts #keepwrecking #EXIT138

<https://myrgv.com/featured/2021/04/18/incumbent-out-earning-challenger-in-sharyland-race/?fbclid=IwAR3-0ovL1pUD1JJuRgNC-VXDko5-AJpJShSidwYtajENmFmJ16FncIVw0Sw>

<https://money.cnn.com/interactive/pf/debt-collector/texas-politics/index.html>

<https://www.ems1.com/ems-management/articles/largest-south-texas-ambulance-provider-files-for-chapter-11-bankruptcy-w4w7KhmV3OTfJ8Ms/>

<https://www.justice.gov/usao-sdtx/pr/hidalgo-county-ems-owner-convicted-bankruptcy-fraud>

81% 10:15 PM



s://m.facebook.com



Only one was Keith Padilla: No signs anywhere

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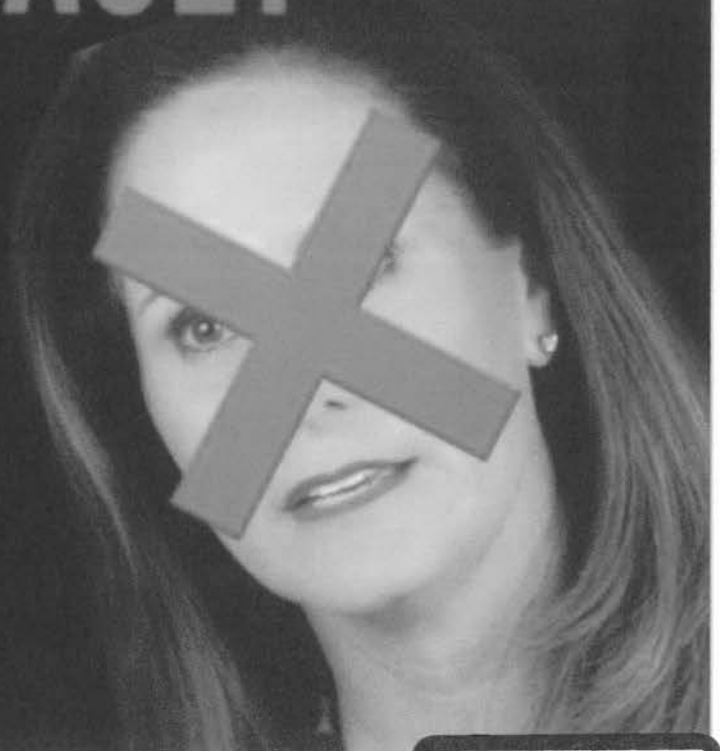
Voters against Sexual Assault

Jan 29 •



Shame on you Mellisa!!!

**Mellisa is a
supporter of
SEXUAL ASSAULT**



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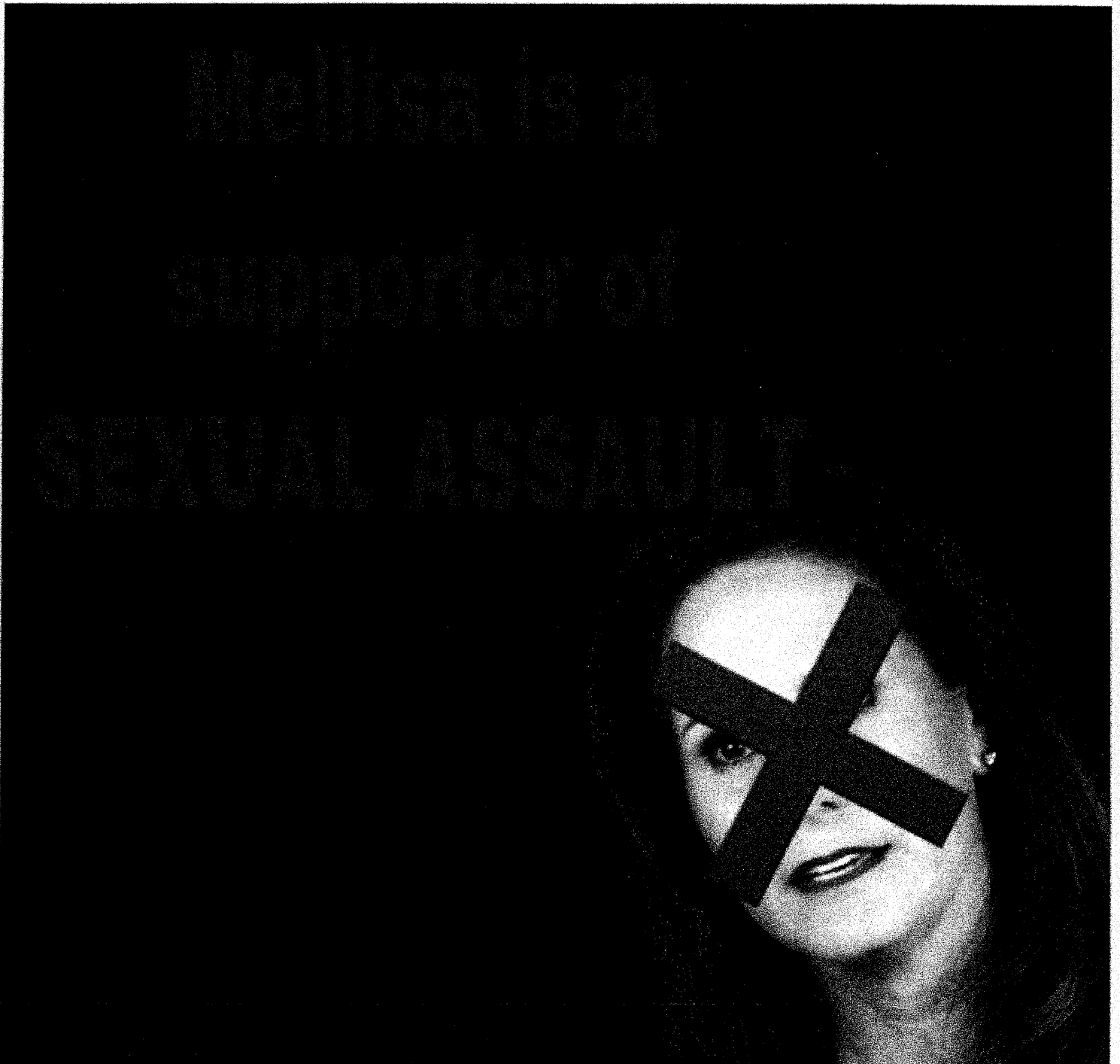


Voters against Sexual Assault



Jan 29 · 🌐

Shame on you Mellisa!!!





Voters against Sexual Assault updated their profile picture.



Jan 29 · 🌐



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Voters against Sexual Assault updated their profile picture.



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Voters against Sexual Assault

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...

GREAT NEWS!

Board member Mellisa won't be seeking a second term, so now our focus is only on one SEXUAL ASSAULT supporter Pepe Garcia.

NASTY PEPE, you shouldn't run either.
we will never forgive your complicity and cowardness!!!
#metoomovement

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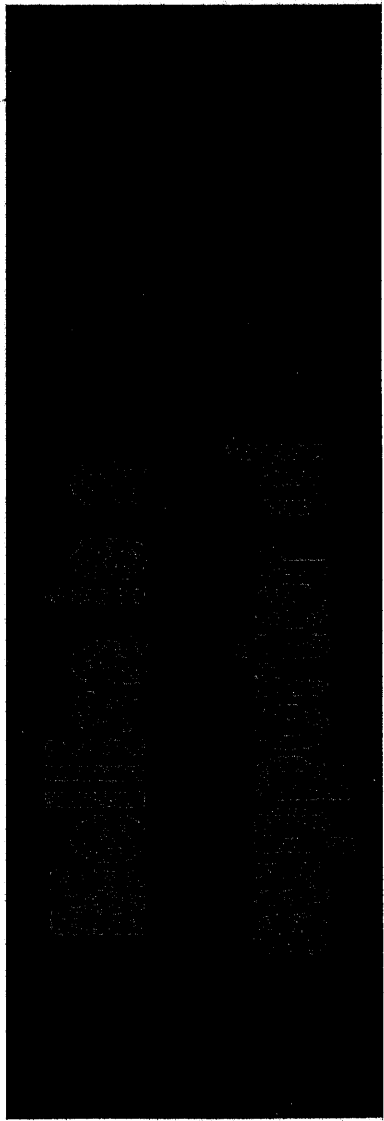


Voters against Sexual Assault

Jan 29 ·

...

Shame on you Mellisa!!!



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Pepe Garcia is in
favor of
**SEXUAL
ASSAULT**



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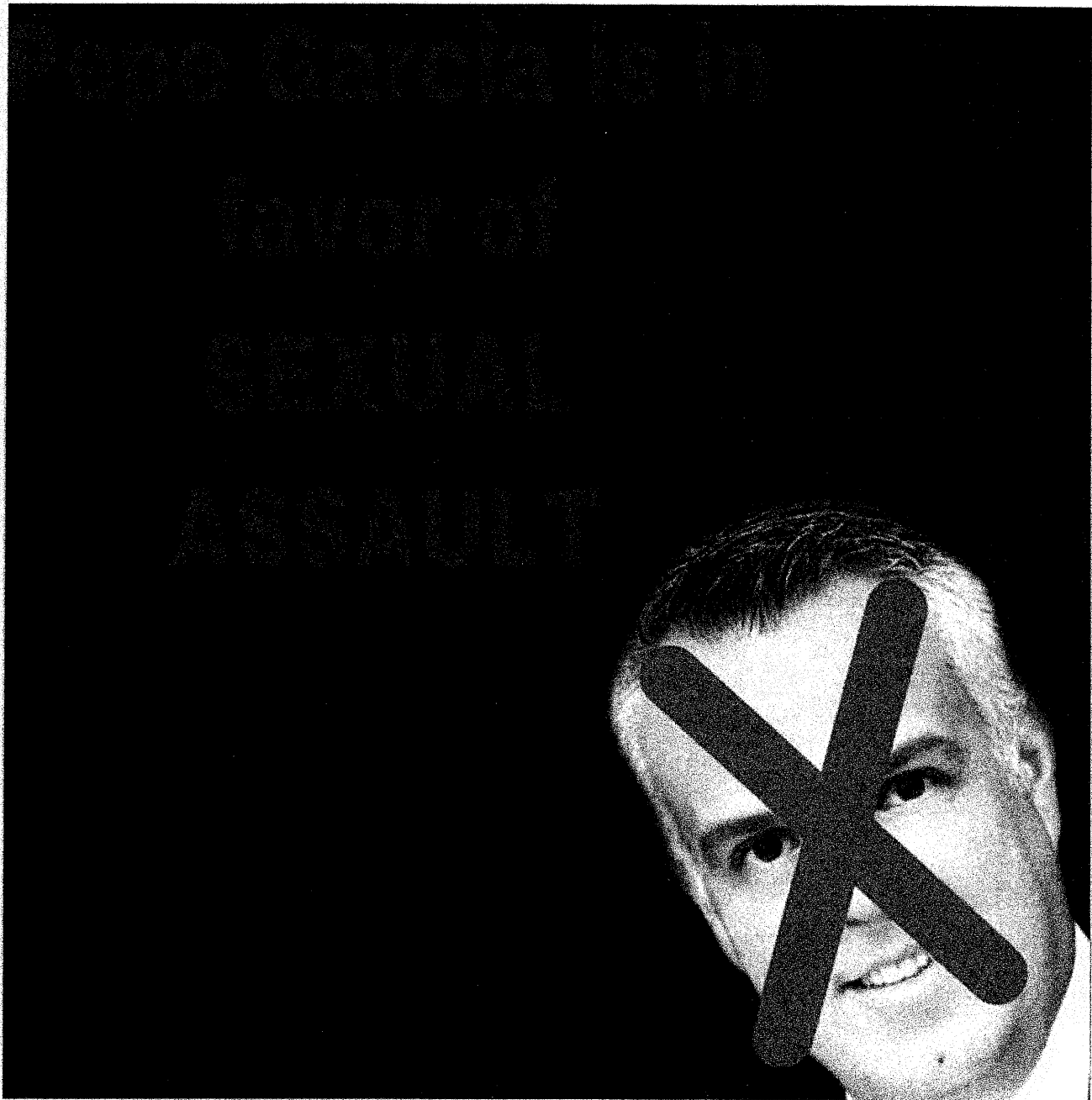
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Jesse Crochet on behalf of Nicholas Bruno
Bar No. 24097432
jcrochet@beckredden.com
Envelope ID: 59838184
Status as of 12/8/2021 3:41 PM CST

Associated Case Party: Dante Flores-Demarchi

Name	BarNumber	Email	TimestampSubmitted	Status
Lane AndrewHaygood		lane@haygoodlawfirm.com	12/8/2021 3:07:37 PM	SENT

Associated Case Party: Melissa Smith

Name	BarNumber	Email	TimestampSubmitted	Status
Nicholas Bruno	24097432	nbruno@beckredden.com	12/8/2021 3:07:37 PM	SENT
Charles Flores	24059759	cflores@beckredden.com	12/8/2021 3:07:37 PM	SENT
Raymond L. Thomas	19865350	rthomas@raythomaspc.com	12/8/2021 3:07:37 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Joshua Morris	24094444	jt@jtmorrislaw.com	12/8/2021 3:07:37 PM	SENT